S. HRG. 101-869

INDIAN ECONOMIC DEVELOPMENT; INDIAN EMPLOYMENT OPPORTUNITY ACTS OF 1989; AND THE SUPREME COURT'S DECICISION IN COTTON PETROLEUM CORP. v. NEW MEXICO

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1203

TO ENCOURAGE INDIAN ECONOMIC DEVELOPMENT

AND

S. 1650

TO REDUCE THE 22 PERCENT UNEMPLOYMENT RATE ON INDIAN RESERVATIONS BY AMENDING THE INTERNAL REVENUE CODE OF 1986 TO PROVIDE INDIAN EMPLOYMENT OPPORTUNITY TAX CREDITS TO EMPLOYERS WITHIN INDIAN RESERVATIONS

MAY 1, 1990
WASHINGTON, DC

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INDIAN ECONOMIC DEVELOPMENT; INDIAN EMPLOYMENT OPPORTUNITY ACTS OF 1989; AND SUPREME COURT'S DECISION IN COTTON PETROLEUM CORP. v. NEW MEXICO

TUESDAY, MAY 1, 1990

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:01 p.m. in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, McCain, DeConcini, Conrad, Gorton, and Cochran.

Senator McCain. (vice chairman of the committee) presiding.

The committee will come to order.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

In order to increase the state of confusion that already exists concerning this hearing, I will now try to explain what our procedure will be.

We will commence the hearing. I will make an opening statement. We expect Senator Domenici and possibly Senator Boren, and we will proceed with the hearing until such time as the distinguished Chairman arrives—he has a conflict on the Appropriations Committee—at which time we will adjourn the hearing and take up markup of several pieces of legislation, and then we will return to the hearing and the witnesses. If that hasn't confused everyone so far, I would be glad to confuse you further.

I want to extend my personal appreciation and thanks to all of our witnesses for being with us today.

We are here today to receive testimony on S. 1203, the Indian Economic Development Act; S. 1650, the Indian Employment Opportunity Act; and related issues of Federal tax policy. Both S. 1203 and S. 1650 would, if enacted, amend the Federal Tax Code to provide incentives for economic development in Indian country.

II

101st CONGRESS
1st Session

S. 1203

A bill to encourage Indian economic development.

IN THE SENATE OF THE UNITED STATES

June 20 (legislative day, January 3), 1989

Mr. McCain (for himself, Mr. Inouye, Mr. DeConcini, Mr. Gorton, Mr. Cochran, and Mr. Burdick) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

A bill to encourage Indian economic development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) Short Title.—This Act may be cited as the "Indian Economic Development Act of 1989".

(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. PURPOSE.

It is the purpose of this Act to provide for the establishment of incentives in order to stimulate the creation of new jobs and employment training, to assist the development of reservation infrastructure, and to promote revitalization of economically distressed Indian reservations primarily by providing or encouraging tax relief at the Federal level.

SEC. 3. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATION.

(a) SECTION 38 PROPERTY.—Paragraph (1) of section 48(a) (defining section 38 property) is amended by striking "or" at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting "; or", and by adding after subparagraph (G) the following new subparagraph:

> "(H) qualified Indian reservation property (within the meaning of subsection (t)) which is not otherwise section 38 property."

(b) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Subsection (a) of section 46 (relating to amount of investment tax credit) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(4) in the case of qualified Indian reservation property, the Indian reservation percentage."

(2) INDIAN RESERVATION PERCENTAGE DEFINED.—Subsection (b) of section 46 is amended by adding at the end thereof the following new paragraph:

"(5) INDIAN RESERVATION PERCENTAGE.—For purposes of this subsection—

"In the case of qualified Indian reservation property which is:	The Indian reservation percentage is:
Reservation personal property (within the meaning of section 48(t)(2))	5
New reservation construction property (within the meaning of section 48(t)(3))	20
Reservation infrastructure investment (within the meaning of section 48(t)(4))	10."

(3) CONFORMING AMENDMENT.—Section 48(o) (defining certain credits) is amended by adding at the end thereof the following new paragraph:

"(4) INDIAN RESERVATION CREDIT.—The term 'Indian reservation credit' means that portion of the credit allowed by section 38 which is attributable to the Indian reservation percentage."

(c) DEFINITIONS AND TRANSITIONAL RULES.—Section 48 (relating to definitions and special rules) is amended by redesignating subsection (t) as subsection (u) and by inserting after subsection (s) the following new subsection:

"(t) QUALIFIED INDIAN RESERVATION PROPERTY.—

"(1) IN GENERAL.—The term 'qualified Indian reservation property' means property—

"(A) which is—

"(i) reservation personal property,

"(ii) new reservation construction property, or

"(iii) reservation infrastructure investment, and

"(B) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

"(2) RESERVATION PERSONAL PROPERTY DEFINED.—The term 'reservation personal property' means property—

"(A) for which depreciation is allowable under section 168,

"(B) which is not—

"(i) nonresidential real property,

"(ii) residential rental real property, or

"(iii) real property which has a class life of more than 12.5 years, and

"(C) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation.

Property shall not be treated as 'reservation personal property' if it is used or located outside the Indian reservation on any regular basis.

"(3) NEW RESERVATION CONSTRUCTION PROPERTY DEFINED.—The term 'reservation construction property' means property described in clause (i), (ii), or (iii) of paragraph (2)(B)—

"(A) which is located in an Indian reservation,

"(B) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, and

"(C) which is originally placed in service by the taxpayer.

"(4) RESERVATION INFRASTRUCTURE INVESTMENT DEFINED.—

"(A) IN GENERAL.—The term 'reservation infrastructure investment' means reservation personal property which—

"(i) benefits the tribal infrastructure, and

"(ii) is available to the general public.

"(B) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—For purposes of this paragraph, the term 'reservation personal property' includes property which would (but for its location outside the reservation) be Indian reservation property, but only if its purpose is to connect to existing tribal infrastructure in the reservation. Examples of property which may be described in this paragraph include roads, power lines, water systems, railroad spurs, and communication facilities.

"(5) REAL ESTATE RENTAL.—For purposes of this section, ownership (or leaseholding) of residential, commercial, or industrial real property within an Indian reservation for rental shall be treated as the active conduct of a trade or business in an Indian reservation."

(d) LODGING TO QUALIFY.—Paragraph (3) of section 48(a) (relating to property used for lodging) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking the period at the end of subparagraph (D) and inserting ", and," and

(3) by adding at the end thereof the following new subparagraph:

"(E) new reservation construction property."

(e) RECAPTURE.—Subsection (a) of section 47 (relating to certain dispositions, etc., of section 38 property) is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

"(i) is disposed of, or

"(ii) in the case of reservation personal property—

"(I) otherwise ceases to be section 38 property with respect to the taxpayer, or

"(II) is removed from the Indian reservation, converted, or otherwise ceases to be Indian reservation property,

the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decrease in the credits allowed under section 38 by reason of section 46(a)(4) for all prior taxable years which would have resulted solely from reducing the expenditures taken into account with respect to the property by an amount which bears the same ratio to such expenditures as the number of taxable years that the property was held by the taxpayer bears to the applicable recovery period under section 168(g)."

(f) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 48(q) (relating to basis adjustment to section 38 property) is amended to read as follows:

"(3) SPECIAL RULE FOR QUALIFIED REHABILITATION AND INDIAN RESERVATION EXPENDITURES.—In the case of any credit determined under section 46(a) for—

"(A) any qualified rehabilitation expenditure in connection with a qualified rehabilitated building, or

"(B) any expenditure in connection with new reservation construction property (within the meaning of section 48(t)(3)),

paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d) shall be applied without regard to the phrase '50 percent of'."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 1988, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

SEC. 4. NONRECOGNITION OF GAIN ON THE SALE OF INDIAN RESERVATION PROPERTY WHERE REINVESTMENT IN SUCH PROPERTY OCCURS WITHIN 1 YEAR.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1043. NONRECOGNITION OF GAIN ON THE SALE OF INDIAN RESERVATION PROPERTY WHERE REINVESTMENT IN SUCH PROPERTY OCCURS WITHIN 1 YEAR.

"(a) IN GENERAL.—No gain shall be recognized on the sale or exchange of Indian reservation property of the taxpayer if the proceeds realized from such sale or exchange are used by the taxpayer to acquire Indian reservation property within the qualified period.

"(b) INDIAN RESERVATION PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'Indian reservation property' means—

"(A) any tangible personal property which is acquired and placed in service by the taxpayer in an Indian reservation and which is used predominately by the taxpayer in the active conduct of an Indian reservation business within such reservation, and

"(B) any real property located in an Indian reservation which is acquired by the taxpayer and which is used predominately by the taxpayer in the active conduct of an Indian reservation business.

"(2) INDIAN RESERVATION BUSINESS.—The term 'Indian reservation business' means any person—

"(A) which is actively engaged in the conduct of a trade or business during the taxable year,

"(B) with respect to which at least 80 percent of such person's gross receipts for such taxable year are attributable to the active conduct of a trade or business which produces goods or provides services within an Indian reservation, and

"(C) with respect to which substantially all the tangible assets of such person are located within an Indian reservation.

"(c) QUALIFIED PERIOD.—For purposes of this section, the term 'qualified period' means the period which ends 12 months after the date of the sale or exchange of Indian reservation property.

"(d) BASIS OF ACQUIRED INDIAN RESERVATION PROPERTY.—If the acquisition of Indian reservation property by a taxpayer results in nonrecognition of any gain or loss on the sale or exchange of other Indian reservation property of such taxpayer under subsection (a), the basis of such taxpayer in the acquired Indian reservation property shall be the cost of such property—

"(1) decreased by the amount of gain which was not so recognized, or

"(2) increased by the amount of loss which was not so recognized.

If such acquired Indian reservation property consists of more than 1 item of property, the basis determined under the preceding sentence shall be allocated among such items in proportion to their respective costs.

"(e) STATUTE OF LIMITATIONS.—If the taxpayer during a taxable year sells or exchanges Indian reservation property at a gain, then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's intention not to acquire any Indian reservation property within the qualified period, or

"(B) a failure to make such purchase within the qualified period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 381 (relating to carryovers in certain corporate acquisitions) is amended by inserting at the end thereof the following new paragraph:

"(27) INDIAN RESERVATION PROPERTY.—The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1043.".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(25) to the extent provided in section 1043(d) in the case of the property the acquisition of which resulted in nonrecognition of gain or loss in other property under section 1043(a).".

(3) Section 1223 (relating to holding period of property) is amended by redesignating paragraph (14) as paragraph (15) and by inserting after paragraph (13) the following new paragraph:

"(14) In determining the period for which the taxpayer has held property, the acquisition of which resulted under section 1043 in nonrecognition of the gain or loss on the sale or exchange of any other property, there shall be included the period during which such other property was held by such taxpayer prior to such sale or exchange.".

(4) Paragraph (4) of section 1245(b) (relating to limitations on gain from disposition of certain depreciable assets) is amended by striking "or 1033" and inserting ", 1033, or 1043".

(5) Paragraph (4) of section 1250(d) (relating to limitations on gain from disposition of certain depreciable realty) is amended—

(A) by striking out "or 1033" in subparagraphs (A) and (E) and inserting in lieu thereof ", 1033, or 1043", and

(B) by inserting "or 1043(a)" after "section 1033(a)(2)" in subparagraph (C)(ii).

(6) Paragraph (2) of section 6212(c) (relating to further deficiency letters restricted) is amended by inserting after subparagraph (E) the following new subparagraph:

"(F) Deficiency attributable to gain on sale of property, see section 1043(e).".

(7) Section 6504 (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(13) Gain on the sale or exchange of property, see section 1043(e).".

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter C of chapter 1 is amended by inserting after the item relating to section 1042 the following new item:

"Sec. 1043. Nonrecognition of gain or loss on the sale of Indian reservation property where reinvestment in such property occurs within 1 year.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1988.

SEC. 5. TARGETED JOBS CREDIT.

(a) MEMBERS OF INDIAN TRIBES ELIGIBLE FOR CREDIT.—Paragraph (1) of section 51(d) (defining members of targeted groups) is amended by striking "or" at the end of subparagraph (II), by striking the period at the end of subparagraph (J) and inserting ", or" and by adding at the end thereof the following new subparagraph:

"(K) a member of an Indian tribe (as defined in section 103(b) of the Indian Self-Determination Act (25 U.S.C. 450b)) who is living in an area of an Indian reservation with respect to which the Secretary of the Interior accepts the certification of the tribal government with jurisdiction over such area that—

"(i) the area is one of pervasive poverty, unemployment, and general duties, and

"(ii) either—

"(I) the unemployment rate for such area, as determined by appropriate available data, was at least 2 times the national unemployment rate for the same period, or

"(II) at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the political subdivision in which such area is located."

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 6. INDIAN RESERVATION TAX CREDIT.

(a) In General.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end thereof the following new section:

"SEC. 30. INDIAN RESERVATION TAX CREDIT.

"(a) Allowance of Credit.—

"(1) In general.—Except as provided in paragraph (2), there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the taxable income from the active conduct of an Indian reservation business.

"(2) Credit not allowed against certain taxes.—The credit allowed under paragraph (1) shall not be allowed against the tax imposed by section 59A, 531, or 541.

"(b) Amounts Received Outside the Reservation.—In determining taxable income for purposes of subsection (a), income shall not be treated as attributable to the active conduct of an Indian reservation business if it is received outside of the Indian reservation. The preceding sentence shall not apply to amounts received from a person who is not a related person.

"(c) INDIAN RESERVATION BUSINESS.—For purposes of this section—

"(1) IN GENERAL.—The term 'Indian reservation business' means any person—

"(A) which is actively engaged in the conduct of a trade or business on an Indian reservation during the taxable year,

"(B) with respect to which the income requirements of paragraph (2) are met, and

"(C) substantially all of the assets of which are located within the Indian reservation.

"(2) INCOME ELIGIBILITY REQUIREMENTS.—The requirements of this paragraph are met if:

"(A) 80 PERCENT TEST.—80 percent or more of the gross income of the trade or business for the 3-year period immediately preceding the close of the taxable year (or such portion of such period as may be applicable) was derived from sources within an Indian reservation.

"(B) 75 PERCENT TEST.—75 percent or more of the gross income for the period described in subparagraph (A) was derived from the active conduct of a trade or business within an Indian reservation."

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 30. Indian reservation tax credit."

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

○

II

101st CONGRESS
1st Session

S. 1650

To reduce the 22 percent unemployment rate on Indian reservations by amending the Internal Revenue Code of 1986 to provide Indian Employment Opportunity tax credits to employers within Indian reservations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

September 20 (legislative day, September 18), 1989

Mr. Domenici (for himself, Mr. DeConcini, Mr. Daschle, Mr. Bingaman, and Mr. Conrad) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To reduce the 22 percent unemployment rate on Indian reservations by amending the Internal Revenue Code of 1986 to provide Indian Employment Opportunity tax credits to employers within Indian reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Employment Opportunity Act of 1989".

SEC. 2. INDIAN EMPLOYMENT OPPORTUNITY CREDIT.

(a) INDIAN EMPLOYMENT OPPORTUNITY CREDIT.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by inserting after section 29 the following new section:

"SEC. 30. INDIAN EMPLOYMENT OPPORTUNITY CREDIT.

"(a) IN GENERAL.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) 60 percent of the qualified employment expenditures of the eligible employer for the taxable year not exceeding $8,840, and

"(2) 20 percent of such expenditures exceeding $8,840 but not exceeding $33,370.

"(b) LIMITATIONS BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed by subsection (a) for a taxable year shall not exceed the excess (if any) of—

"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29, over

"(B) the tentative minimum tax for the taxable year.

"(2) CARRYBACK AND CARRYOVER OF UNUSED CREDIT.—

"(A) ALLOWANCE OF CREDIT.—If the amount of the credit determined under this section for any taxable year exceeds the limitation provided by paragraph (1) for such taxable year (hereinafter in this paragraph referred to as the 'unused credit year'), such excess shall be—

"(i) an Indian employment opportunity credit carryback to each of the 3 taxable years preceding the unused credit year, and

"(ii) an Indian employment opportunity credit carryover to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by this section for such years. If any portion of such excess is a carryback to a taxable year beginning before January 1, 1990, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

"(B) LIMITATION.—The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by paragraph (1) for such taxable year exceeds the sum of—

"(i) the credit allowable under this section for such taxable year, and

"(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EMPLOYMENT EXPENDITURES.—The term 'qualified employment expenditures' means the qualified wages paid or incurred by the eligible employer during the taxable year to qualified employees with respect to all Indian reservations.

"(2) QUALIFIED WAGES.—The term 'qualified wages' has the meaning given to the term 'wages' by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

"(3) ELIGIBLE EMPLOYER.—The term 'eligible employer' means any employer with a trade or business located within an Indian reservation and whose full-time work force with respect to such trade or business is comprised of at least 90 percent qualified employees.

"(4) QUALIFIED EMPLOYEE.—

"(A) IN GENERAL.—The term 'qualified employee' means any member of the Indian tribe which has jurisdiction over the Indian reservation—

"(i) at least 90 percent of whose services for the eligible employer during the taxable year are directly related to the conduct of such employer's trade or business located within such Indian reservation, and

"(ii) who performs at least 50 percent of his services for such employer during the taxable year within such Indian reservation.

"(B) EXCEPTION FOR INDIVIDUALS WITH RESPECT TO WHOM CREDIT IS DETERMINED UNDER SECTION 51(a).—The term 'qualified employee' shall not include an individual with respect to whom any credit for the eligible employer is determined under section 51(a) for the taxable year (relating to targeted jobs credit).

"(5) INDIAN RESERVATION.—The term 'Indian reservation' means an Indian reservation, pueblo, public domain Indian allotment, former Indian reservation in Oklahoma, or land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601, et seqq.).

"(d) APPLICATION TO CERTAIN ENTITIES, ETC.—For purposes of this section, under regulations prescribed by the Secretary, rules similar to the rules of section 52 (other than subsection (b) thereof) and section 41(f)(3) shall apply.

"(e) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any taxable year beginning after December 31, 1990, each dollar amount contained in subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10).

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the abuse of such purposes by denying the credit allowable under this section to employers which relocate their businesses within an Indian reservation while displacing former employees or which otherwise conduct their businesses so as to take advantage of the credit allowable by this section without furthering such purposes."

(b) NO DEDUCTION ALLOWED.—Section 280C of the Internal Revenue Code of 1986 (relating to disallowance of deductions for certain expenses for which credits are allowable) is amended by adding at the end thereof the following new subsection:

"(d) RULE FOR SECTION 30 CREDITS.—No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable under section 30 (relating to the Indian employment opportunity credit). This subsection shall be applied under a rule similar to the rule under the last sentence of subsection (a)."

(c) GUARANTEE AGREEMENT.—Any Indian tribal government of an Indian reservation within which employers utilize the employment tax credit allowable under section 30 of the Internal Revenue Code of 1986 (as added by this section) shall enter into an agreement with the Secretary of the Treasury (at such time and in such form and manner as the Secretary prescribes) guaranteeing that for the period of 10 years from the date of the agreement, or if less, the period during which such section 30 is in effect, such government shall not impose or modify any tax treatment or business regulation which would lessen the tax benefits of such section 30 with respect to such employers.

(d) TECHNICAL AMENDMENTS RELATED TO CARRYOVER AND CARRYBACK OF CREDITS.—

(1) CARRYOVER OF CREDIT.—

(A) Subsection (c) of section 381 of the Internal Revenue Code of 1986 (relating to items of the distributor or transferor corporation) is amended by adding at the end thereof the following new paragraph:

"(26) CREDIT UNDER SECTION 30.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 30, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 30 in respect to the distributor or transferor corporation."

(B) Paragraph (2) of section 383(a) of such Code is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) unused Indian employment opportunity credit under section 30,".

(2) CARRYBACK OF CREDIT.—

(A) Subparagraph (C) of section 6511(d)(4) of such Code (defining credit carryback) is amended by inserting "and any Indian employment opportunity credit under section 30(b)" before the period at the end thereof.

(B) Subsection (a) of section 6411 of such Code (relating to tentative carryback and refund adjustments) is amended—

(i) by inserting "Indian employment opportunity credit carryback," after "section 172(b)," in the first sentence, and

(ii) by striking so much of the second sentence as follows "the return for the taxable year" and inserting the following: "of the net operating loss, net capital loss, unused Indian employment opportunity credit, or unused business credit from which the carryback results and within a period of 12 months after such taxable year (or, with respect to any portion of an Indian employment opportunity credit carryback, or business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year or, with respect to any portion of a business credit carryback attributable to a research credit carryback or an Indian employment opportunity credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year) in the manner and form required by regulations prescribed by the Secretary".

(C) Subsections (a)(1) and (b) of section 6411 of such Code are each amended by inserting "unused Indian employment opportunity credit," after "net capital loss,".

(e) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 29 the following new item:

"Sec. 30. Indian employment opportunity credit."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made after June 30, 1990, in taxable years ending after such date.

SEC. 3. BRIBERY OF TRIBAL OFFICIALS.

(a) IN GENERAL.—Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1169. Bribery of tribal officials

"(a) Whoever—

"(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any tribal official, or person who has been selected to be a tribal official, or offers or promises any tribal official, or any person who has been selected to be a tribal official, to give anything of value to any other person or entity, with intent—

"(A) to influence any official act,

"(B) to influence any tribal official, or person who has been selected to be a tribal official, to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the Indian tribe of such tribal official or person or on the United States, or

"(C) to induce any tribal official, or person who has been selected to be a tribal official, to do or omit to do any act in violation of the lawful duty of such official or person; or

"(2) being a tribal official, or person selected to be a tribal official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for—

"(A) being influenced in the performance of any official act,

"(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the Indian tribe of such tribal official or person or on the United States, or

"(C) being induced to do or omit to do any act in violation of the official duty of such tribal official or person, shall be fined not more than the greater of $20,000 or 3 times the monetary equivalent of the thing of value, or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

"(b) For purposes of this section—

"(1) The term 'tribal official' means any officer or employee of, or any individual acting on behalf of, any Indian tribe or any branch of government of an Indian tribe.

"(2) The term 'person who has been selected to be a tribal official' means any person who has been nominated or appointed to be a tribal official, or has been officially informed that such person will be so nominated or appointed.

"(3) The term 'official act' means any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any tribal official, in such official's official capacity, or in such official's place of trust or profit.

"(4) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, Regional Corporation or Village Corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seqq.)) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

(b) CONFORMING AMENDMENT.--The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1169. Bribery of tribal officials.".

○

I hope that the record which is developed here will provide the basis for the further consideration of these bills by our colleagues on the Finance Committee.

We will also receive testimony regarding other aspects of Federal law and policy which appear to run counter to our general policies, which are intended to promote tribal self-determination and economic development in Indian country. This hearing is our first opportunity to examine these inconsistencies in Federal tax law and policy as they relate to Indian tribes. Given the complexities of these issues, I am sure that more hearings will be required.

I began an effort over 5 years ago to amend the Federal Tax Code to provide incentives to promote economic activity in Indian country. The early versions of my legislation were explicitly based on the concepts found in most enterprise zone legislation. The bills were tailored to meet the unique facts and circumstances found in Indian country. Over the years I have heard from a large number of tribal leaders and others who are experienced in promoting economic development in Indian country.

Based on the comments I have received, S. 1203 was developed. It is a far different bill than those I introduced earlier. It does not establish enterprise zones. Instead, it implicitly recognizes that most reservations already resemble enterprise zones. Stated simply, S. 1203 attempts to provide an array of Federal tax credits as incentives for direct investments in Indian country. These incentives are not new or radical. They either currently exist in the Federal Tax Code or were previously part of the tax code. What is new, and to some may be radical, is that these incentives are targeted directly at Indian country.

The provisions of S. 1203 would provide a targeted jobs tax credit; a capital gains exclusion; investment tax credits; and extend the so-called "possessions tax credits" to Indian country.

I am advised that one of the reasons why S. 1203 may not be viewed with favor by some is that it is difficult or impossible to assess its revenue impact. I personally believe that, at worst, the impact would be neutral. In reality S. 1203 should lead to increased Federal revenues, to increased employment, and a decrease in public assistance payments.

I have obtained an analysis which supports this view and ask unanimous consent that it be included in the record of this hearing.

Without objection, so ordered.

[Analysis appears in appendix.]

Senator McCain. We will begin our hearing today with my good friend and distinguished colleague, Senator Domenici. Last year Senator Domenici introduced S. 1650, the Indian Employment Opportunity Act. If enacted, this bill would provide powerful incentives aimed at encouraging employers to locate on reservations and provide jobs to unemployed tribal citizens.

I commend Senator Domenici for his work on this bill and his tireless efforts to improve the quality of life of Indian people. It has been a great honor and privilege for me to work with him over many years as I have observed his dedication to the Native Americans in our part of the country, as well as throughout the Nation.

Welcome, Senator Domenici. We are pleased by your presence today and appreciate any comments or statement you wish to make.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Senator McCain.

Let me first say that I don't have they monopoly on what is best and what we ought to do in the economic development area for our Indian people. I claim no special knowledge, but I want to discuss the reasons that I think S. 1650, the Indian Emploment Opportunity Act, is a good concept. I think you would note rather quickly that it would merge and mesh quite well with significant portions of your bill, S. 1203, with reference to tax incentives. But let me discuss with you why I think the approach I have taken is the very best, for several reasons.

First, if you look at tax incentives that have been significant and targeted to a group of people, the most profound one is section 936, Puerto Rican tax credit which the United States of America decided should be provided because of an extreme disparity in economic development between Puerto Rico's citizens and their ability to earn a good living, and other Americans.

So I started with the notion that we ought to look at something like the Puerto Rican tax credit. I believe, Senator McCain, you have looked at a notion something like that also. But one of the perplexing problems for me, as I studied that approach, was that it applied everywhere in Puerto Rico. I didn't think we could create a tax incentive for private sector development that automatically would apply everywhere in Indian country. It is imperative that we come up with something that is optional.

As I explored futher it seemed to me that we would get some objections from non-Indians to the establishment of private sector businesses in Indian country, if we would be taking business opportunities from other Americans as the result of an incentive program study available in Indian country. I think we would run into, "Well, what about other places where job opportunities are not as high as average Americans?" And, "When will you stop attracting the incentive-laden business to Indian country?" Would it not just become an island of investment instead of an island of Indian opportunity?

To address this problem we should limit the incentives to businesses willing to hire 90 percent of its workforce from the Indian tribe. That immediately begins to tell the rest of Americans that we are not trying to attract business, but we are trying to attract only as much business as there are unemployed and job-needy Indian people.

As I thought of it that way, it seemed to me that there was one big flaw with the Puerto Rican tax credit. There is no relationship between the size of the tax credit and the number of jobs created. We in fact, studies of section 936 show that it is inverse: Heavy investment of dollars high corporate profits and often, low creation of jobs result, because as you well know, the tax credit is based on corporate profit. What did section 936 attract? It attracted the pharmaceutical industry, and the number of jobs that are directly related to the business is not even up to average in the United States for a dollar invested at random in business.

There must be a better way. I claim no credit for inventing it, but I take credit for finding it. The U.S. Treasury Department, about 3 or 4 years ago, was seriously looking at the Puerto Rican credit. They said, "It ought to be fixed. It's not working as well as it should." Interestingly enough, the suggestion was that the tax credit be related to employment and to the wages paid instead of to the corporate profit. This is the basis of my bill and its distinguishing feature.

First, it would be optional with any Indian reservation, tribe, or group of people. They don't have to take it. If they take it, they agree to some things.

Second, to qualify once a company went there with an investment to produce American goods or services, it would have to employ 90 percent Indian people to be eligible for the tax incentives.

Third, the tax credit of the company, be it an Indian company that wants the incentive—and they could do that—or a non-Indian company, the credit would be directly related to the number of jobs created and the salary paid to workers. It's very simple. The credit is equal to 60 percent of the first $8,800 per year paid to an Indian employee. For wages between $8,800 and $33,000 it is 20 percent. No tax credit for wages over $33,000.

We have discussed these parameters with business people, and clearly, these are very, very good incentives. What they would do is attract businesses that employ a maximum number of people per dollar invested because the credit is not related to the profit, but rather to the jobs created and salaries paid.

Again I repeat, while I think it fits very, very well when tied to the other conditions and the other objectives, I don't want to take credit for inventing it. At the same time it gives me a little more confidence that tax experts and business experts within the Treasury Department and IRS experts were thinking of this as a catalyst for creating good jobs. They believe it is a much more efficient program than what is on the books for Puerto Rico. The results would be more jobs per dollar invested.

Therefore I strongly recommend that you build on the bills that are presented. S. 1650 would provide an opportunity for Indian people to elect to become a tax incentive area by seriously building in the two criteria that I believe will get us support in the non-Indian country. The jobs have to be 90 percent Indian, and second, that the credit has to be related to the salaries paid.

I honestly believe it will work. Let me tell you another exciting thing about it. In a sense it is self-limiting. The rest of the country would ask, "Are you serious, that you want a tax incentive for Indian country?" A surrounding area would say, "They're going to take a business that's supposed to come to Grant, New Mexico, and it's going to go to Navajo country instead." Our answer is, a business will go to Navajo country only if they employ 90 percent Navajo Indians. The businesses will not go there when the marketplace no longer has people who want work.

In the case of the Navajo Indians, which you are familiar with, unemployment is tremendous now. No one would object to a business moving there and hiring our Navajo Indians. The program would be self-limiting as to how many businesses would take advantage of this program.

Now, Mr. Chairman, I want to touch on the stand still agreement. It is absolutely imperative from my standpoint, and I know that some of our Indian people that talk to me worry about this. For the Puerto Rican tax exemption to work, the Puerto Rican Government had to sign an agreement that they would not, for a period of time, canceled out the value of the Federal tax incentive by putting their own tax on the very same entity. If a business moves onto a reservation, the tribe add additional taxes or continually change the rule. If a tribe or Pueblo did that, first of all, it would destroy the incentive, and second, it would be a great minimizer on the attractiveness of the investment.

We have to do something like that for some period of time. That does not mean that you are trying to take away from the Indian government the right to tax payroll checks. If they want to tax income, that's their business. If they want to have a sales tax on the profits that are generated and the payroll checks that are created, they can do that. But you have to build stability into the tribe's tax system or else it would be self-defeating and there would be no reason for businesses to locate on the reservation. We learned this in our Puerto Rico experimenting. Puerto Rico agreed to 15 or 20 years of tax stability. I don't have any miraculous number of years, but you have to have some.

There are many other things we could discuss. I am not going to take time for any others. You have a number of proposals before you on loan programs and on economic development programs. Many of them are very, very good. I submit to you that if the Navajo nation—just take them as an example—if we had this incentive built into the legislation, they could decide whether they wanted it or not. It provides tremendous opportunities for them to consider maybe even creating a zone where business would go under this, where you could build infrastructure around it so that the people who would be there would also have water and sewer. You could develop ideas around the fact that business would come because of this Indian wage credit incentive. And Indian business could be created. An entrepreneur from Indian country could decide that he wants to try this, and his business would be entitled to this credit.

I think it's high time that we try this. It is time to help some Indian entrepreneurs make partnerships on their own, on Indian land, so that they don't always have to tell their children, "We can't own a business in Indian country that is our own." This would be a way to do that if the Indian leadership wanted them to, and they would be at par with other entrepreneurs in the country. I truly believe it will work.

I am going to close by saying that I am not at all sure that anything else will work very well. This bill is on tribal government, on communal property concepts that we want to retain for the Indian people as long as they want them, but it imposes a natural desire on the part of those who want to make money in business to look there to see if they want to employ people. There's nothing wrong with wanting to make a profit. You've got to make a profit to be in business. The problem is, not many businesses think they can do that in Indian country. I think they would if we had some incentive like this.

Thank you very much.

Senator McCAIN. I certainly thank you, Senator. There's only one area in which I would disagree. You say you bring no special knowledge to the issue. You bring a great deal of special and unique knowledge to this issue, and we are very appreciative. I think your comments are very important and I look forward to working with you on possibly including that, or working together to see that we move forward with this.

One area on which we are in total agreement is that something has to be done about this national disgrace of 80 or 90 percent unemployment across Indian country.

Senator DOMENICI. No doubt about that.

Senator McCAIN. Thank you again, Senator Domenici. We are very grateful to you for taking your time to be with us.

Next we will have Eddie Brown, Assistant Secretary for Indian Affairs.

Welcome, Dr. Brown. It's a pleasure to see you again. We would be glad to make your complete statement a part of the record, if you so choose, and you may proceed in whatever fashion you feel would be most appropriate.

Welcome again.

STATEMENT OF EDDIE BROWN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WILLIAM RICHARDSON, DEPUTY ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT; AND DAVID ETHERIDGE, ATTORNEY ADVISOR, ASSOCIATE SOLICITOR'S OFFICE

Mr. BROWN. Thank you, Mr. Chairman and members of the committee.

I am pleased to discuss S. 1203, the Indian Economic Development Act, S. 1650, the Indian Employment Opportunity Act of 1989, as well as the Supreme Court's decision reached in the *Cotton Petroleum* v. *New Mexico* case.

Let me begin by saying that while we applaud efforts to stimulate economic development opportunities on Indian reservations, we cannot support enactment of S. 1203 and S. 1650 at this time. Both bills would make substantive and technical changes to the Internal Revenue Code of 1986. At this time there is not sufficient analysis available to judge the overall impact on Government revenues. We believe that further study of this issue is needed, which we hope to see accomplished.

Let me just briefly summarize, for the purpose of this hearing, some of the tribal comments we received at the two regional economic summits which we organized earlier this year in Phoenix, AZ, and Fort Lauderdale, FL. We will scheduling additional economic summits in other parts of the country.

The tribal participants at both regional summits expressed strong support for S. 1203. These summits are being held as part of my efforts to consult with tribes concerning the best ways to promote economic developments on reservations. Their decision was based partly on the fact that the bill did not interfere with a tribe's right to chart its own course and set its own pace for reservation based economic development by mandating certain tribal actions in return for Federal assistance.

The participants also observed that even if S. 1203 were enacted, these incentives would be of little value unless a tribe was willing to conduct its own internal review to determine actions that it could take or incentives it could offer to further enhance their reservation as a place for the private sector to do business.

The participants had two additional concerns as well. First, they expressed caution that enactment of S. 1203 or S. 1650 should not be offset by a reduction in other forms of Federal assistance to tribes. Second, many participants felt that the Congress should review the restrictions it placed on a tribe's ability to issue tax exempt bonds.

In regards to S. 1650, which proposes an ambitious effort of reducing the unemployment rate on Indian reservations by 22 percent, the proposal is to give employers located on Indian reservations a tax credit for 10 years based on wages paid by the employer. The tax credit is designed to compensate all employers regardless of the type of employment that they provide.

A second feature in the bill requires that an Indian tribe desiring to participate in the Tax Credit Program enter into an agreement with the Secretary of the Treasury guaranteeing that for 10 years, during which an employer is taking advantage of the Tax Credit Program, the tribal government will not impose or otherwise modifiscal year existing tax laws or regulations to lessen the tax benefits resulting from the wage based credit.

The tribal participants at the regional summits generally favored enactment of S. 1650. However, some thought that the 10 year cap on tribal taxes was an infringement upon their inherent powers of taxation. They viewed the 10 year agreement as a disincentive and doubted whether any tribe would enter such an agreement in order to obtain a benefit for employers.

Others proposed a link up between S. 1203 and S. 1650 by replacing the Target Jobs Tax Credit in S. 1203 with the wage based credit in S. 1650.

From these summits that we have held, and will also be holding in the future, we have gained a greater appreciation for the comprehensive and multifaceted nature of tribal community development. The tribal participants have defined a process of successful economic development as encompassing a wide range of activities including the promotion of profitmaking enterprises, the enhancement of tribal physical and governmental infrastructures, the delivery of community services, as well as the tribal management of land and natural resources.

As you know, Secretary Lujan and I are committed to the policy of Indian self-determination. Secretary Lujan takes very seriously his trust responsibility, and has informed the entire Department that we would consider the trust responsibility in the conduct of all of the various program operations. I share the Secretary's commitment. As a result, I have asked for a review of the Indian Finance

Act programs and will be seeking, in the near future, a review of other programs within the Bureau.

Now let me turn for just 1 minute to the 1989 Supreme Court decision in *Cotton Petroleum* v. *New Mexico*.

As you are aware, the majority of the Court found that there was no evidence to support a finding of adverse impact on the economy on the Jicarilla Apache Reservation when the State of New Mexico, as well as the tribe, taxed the production of Cotton Petroleum, a non-Indian oil and gas producer operating on the reservation.

The Jicarilla Apache Tribe was not a party to the litigation and this, in part, may explain why the court found no evidence of adverse effect on the tribe's ability to attract oil and gas lessees. Had the tribe been a party, sufficient evidence may have been introduced at the trial level to satisfiscal year the court.

We are aware that the States and tribes have been discussing possible legislation addressing this decision. We will defer comment on these legislative proposals until they have been introduced.

While the Supreme Court may very well rule in favor of the tribe and its lessee when presented with substantial evidence of tribal economic injury resulting from a State tax, the case is still a damaging precedent. Therefore, we would welcome the opportunity to sit down with this committee and examine legislative options once they have been introduced.

In conclusion, I want to emphasize the commitment of both Secretary Lujan and myself to taking steps to promote economic development on Indian reservations. I will be happy to work with Congress toward reaching this goal.

I, along with Mr. William Richardson, our deputy assistant secretary for Economic Development, and Mr. David Etheridge, attorney advisor from the Associate Solicitor's office, are available for any questions that you may have of us.

[Prepared statement of Mr. Brown appears in appendix.]

Senator McCAIN. Thank you, Mr. Chairman.

Dr. Brown, I agree with you that it is difficult to know for sure what the revenue impacts of S. 1203 would be, although previous experiences with tax incentives in low income areas has been, overall, an increase to revenues to the local and Federal Governments. But setting that aside, do you know of any other legislative remedy that would address, or attempt to address, some of these issues which would not include direct Federal outlays?

Mr. BROWN. No, sir; not at this time.

Senator McCAIN. Well, again we are faced with this same problem that many Administration witnesses have. This is that, clearly, in concept, you agree, Dr. Brown—I am obviously putting words in your mouth—with the concept but because of the perceived revenue impact, you are unable to support this kind of legislation. I hope that perhaps the Administration and OMB would take into consideration that some studies, show that the revenue impacts are indeed positive over time, as far as reducing welfare payments and increasing Federal taxes, as more and more people are employed and business flourishes.

Do not believe anything that man just told you. [Laughter.]

Dr. Brown.

Mr. **Brown**. Mr. Chairman, we're aware of those studies and we're prepared to sit and work with the Treasury to review that and take a look at what might be the outcome so that we might have a better approach as to the impact of these bills on the Indian community as well as to the total tax revenue.

Senator **McCain**. Perhaps I am too close to the issue and unable to maintain my objectivity, Dr. Brown, but I believe that there is a rising concern throughout this Nation about our treatment of native Americans and that, over time, the Chairman and I will be able to force some kind of legislative relief for these people to stimulate economic development because, in my view, we've tried every other program.

Maybe I am incorrect, but I thank you for your testimony.

Thank you. Mr. Chairman.

Senator Inouye. (chairman of the committee) presiding.

Thank you very much.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The **Chairman**. I would like to reiterate what Senator McCain has just stated. We have searched our records, gone back several decades, to study the role that the Nation has played in providing assistance to native Americans so that they could become self-reliant, independent people that don't have to depend on handouts. After all Indians, like any one of us, are very proud people.

I noticed in our history that whenever the Congress comes up with an initiative such as that proposed by Senator McCain, the only response we seem to get from the Government is that they are against it. They can find all kinds of reasons for it. I have been in this business long enough to know that if I should tell my staff, "This one I am going to support, so get me 10 reasons why I should be for it," and they will get 10 reasons for it. I can get the same bill and tell them, "I am against it, get me 10 reasons against it," and they will find 10 reasons against it.

I would hope that the time will come when the leadership of this country would tell their staff, "Get me 10 reasons to support this measure. Come up with something."

This committee has been, sadly, a committee of promises. We make all kinds of promises to Indians by introducing measures. We give them false hopes. As Senator McCain has said, the time has come to do away with false hopes. We are ready to gamble, if necessary. We have no idea what the outcome of the measure will be 10 years from now, but at least we will do something. And we hope that you will work with us in doing something.

For example, we have on the markup agenda S. 143. I have been told that you have an idea of your own and I am willing, as chairman of this committee, to set this measure aside for 30 days to give your staff and the committee staff an opportunity to get together and see if we can work something out. If this is the way we can get action, I am willing to do that.

Do you think that would help you, sir?

Mr. **Brown**. Yes, sir; let me reiterate our willingness to work with the committee at reviewing alternatives to S. 143. As you know, I have asked for an internal review of our Indian Finance Act programs within the Department. That review is now in draft. I have asked my staff to respond to that. We will then be taking a look at that and, based on that review, will be developing options with the Department and, as we indicated, we want to work in the next 30 days with the committee to see what we might be able to forge together to address these critical issues, sir.

The CHAIRMAN. I hope that you will look upon the measures that Senator McCain has introduced, with my support, very seriously because—John you are ready to move are you not?

Senator McCAIN. I have been for several years, Mr. Chairman.

The CHAIRMAN. If the agency is not going to move, notwithstanding the opposition—you are ready to move are you not?

Senator McCAIN. Yes, sir.

The CHAIRMAN. We will move.

But will you tell your superiors that for many, many decades we have known about the problems that Indians are facing, their financial problems. We know that. That is no secret. That is not something that came about with Glasnost and Perostroika. It has been there from the time of the Indian wars.

So we think we have had enough time to just debate this. Let us get down to action. First, on S. 143, we have 30 days. If nothing comes up, we will pass the bill and we will see what happens.

On these other measures, the McCain measures, we will give you at most 30 days. If nothing happens, believe me we will have a markup in 30 days and the McCain bill will be favorably reported. Is that fair enough?

Mr. BROWN. Fair enough, sir.

The CHAIRMAN. I thank you very much, sir.

[Whereupon, at 2:35 p.m., the committee proceeded to further business.]

[Whereupon, at 3:20, the committee resumed its sitting.]

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. We will now return to the hearing to receive testimony on two measures that are designed to promote business development on Indian reservations. The two measures, S. 1203 and S. 1650, are pending in the Senate Finance Committee and at this time there is no indication that the Finance Committee intends to act on either measure.

The bills would make use of the Internal Revenue Code to create incentives for business development on Indian reservations. And I might say that there is ample precedent in use of the Internal Revenue Code for such purposes.

The impetus for this hearing comes directly from Indian country, but partly in reaction to the failing of the Senate Finance Committee to consider these important measures, and partly in reaction to the decision that the Supreme Court handed down 1 year ago in the *Cotton Petroleum* case that upheld the imposition of State taxes on oil and gas production by non-Indian enterprises on Indian land. These taxes are in addition to tribal taxation of the same oil and gas production.

While reasonable people may disagree with the findings of the Supreme Court and the logic of the decision, we nevertheless have to deal with the reality of that decision. Part of that reality is that the decision creates a further disincentive for businesses which may otherwise be considering development on Indian lands.

This disincentive of duel taxation is just one more in a series of disincentives to business development including heavy paperwork requirements imposed by the Bureau of Indian Affairs, sovereign immunity of Indian tribes, the remote locations of Indian land, and the lack of infrastructure or other amenities or services. This committee and this Congress are committed to the concept of providing positive incentives for the development of Indian country. We need to backup this commitment in the form of legislation that will create those incentives.

Some of that work has been undertaken by this committee in measures such as the Indian Finance Development Corporation Act, which we discussed earlier today. Other acts are already completed, but we must look to the Senate Finance Committee for assistance in identifying other means of fostering development in Indian country including amendments to the U.S. Tax Code.

The testimony this afternoon will assist us in presenting a most compelling case to the Finance Committee for action on measures such as S. 1203 and S. 1650, and on measures that will address the duel taxation issue. That will show ways in which the Federal tax policy can be made consistent with, and be used in promoting, congressional policy of Indian self-determination in economic development of Indian country.

May I call upon my distinguished vice chairman for his comment?

Senator McCAIN. Thank you, Mr. Chairman. I have no further comments.

The CHAIRMAN. May I now call upon the first panel consisting of the executive director of the Council of Energy Resource Tribes of Denver, Mr. David Lester; representing the Rocky Mountain Oil and Gas Association of Salt Lake City, Mr. Fred Payne; and the senior consultant for the National Economic Research Associates of San Francisco, Mr. Mark Berkman.

Gentlemen, welcome, and may I call upon Mr. Lester.

STATEMENT OF DAVID LESTER, EXECUTIVE DIRECTOR, COUNCIL OF ENERGY RESOURCE TRIBES, DENVER, CO

Mr. LESTER. Thank you, Mr. Chairman. It's a pleasure to be before your committee to address these important issues.

I would like to begin by emphasizing that an Indian tribe is a separate political, economic, and cultural entity. This fact is supported by international, constitutional, and Federal statutes, as well as many court decisions.

Current congressional and Federal Indian policy respects such a reality and emphasizes self-determination, self-government, and self-development as the pillars in guiding actions by Congress and the administration. We believe that the key policy questions that you are raising with the introduction of bills to amend the tax code, as well as the Indian Development Finance Corporation Act, address critical components to encourage and support tribal self-development.

How big is the job to develop tribal economies? We have estimated that if tribal economies grew at a rate of 10 percent annually for a period of 21 years, they would be able to close the economic gap between themselves and the rest of the American economy.

To accomplish a growth rate this high and to sustain it over such a long period of time would require a minimum of $440 million of new capital investments annually.

There is operating, I think, largely, in the minds of the American public, the concept that Indian lands are a place where investments have not taken place and that Indian tribes do not possess a tax base. This myth—while it's certainly that the tribal development has not occurred as rapidly or as extensively as other parts of the United States, and that the tribal tax base is not as well developed and diversified as other political entities within the United States—it is not true that there is no investment, nor is it true that a tax base does not exist. Particularly in the natural resource area, literally billions of dollars of private capital has flowed to the development of tribal natural resources.

Unfortunately, the tax base that that investment developed is largely occupied today by Federal and State tax policies that are unrelated to local tribal priorities and/or national Indian policy. We have estimated the combined revenues of the Federal Government, State Government, and their political subdivisions ranges near $500 million a year.

In stating that I do not want to paint a picture of economic warfare between tribes and the Federal tax policy, nor between tribes and States and their political subdivisions, we firmly are committed, and believe strongly, that cooperation rather than confrontation is needed for all to address their interests without doing violence to the legitimate interests of other parties.

Unfortunately, this is the dilemma that the *Cotton Petroleum* decision creates for Indian tribes—for tribes to develop their tax base, to acquire the capital they need for their own investment in their own people in human development as well as the development of their economies that the tax capacity of a single company or of an entire industry may be exceeded.

Indian energy minerals are nonrenewable resources. The development of that nonrenewable resource converts that resource into financial assets which the tribes use to invest in their people and in their future development. To the extent that tribal resource development is inhibited by Federal and/or State tax policy, we believe that is a role for Federal leadership, in cooperation with the States and the tribes, to be able to find workable solutions.

If we leave the issues unaddressed, the upshot will be a lessening of interest in tribal Indian mineral land. Exploration will be reduced resulting in lost future revenues. Current development of proven reserves will be limited thus accelerating production declining curves. And, ultimately, we believe that there will be a premature abandonment of existing tribal reserves that would shut the door on future beneficial development and beneficial activity.

The first instance of harm in this scenario is to the Indian mineral owner, the tribe, or the allottee in reduced income and future opportunity. The second instance of harm is to the American industry, both the energy industry as well as the industry of America that requires energy resources and energy sources to operate with. And finally, the third instance of harm is to national security. It is not uncommon that our young men and women, in disproportionate numbers, serve to defend the security of this great Nation. So we have a vital interest in this national policy issue.

We do not believe that the *Cotton Petroleum* decision was a victory of States over tribes, but rather was a defeat of a national priority, therefore it deserves national attention and remedies need to be developed to correct the harm that is and will be done if we allow it to remain.

There have already been numerous discussions between tribes and State Governments. We don't believe that the dialog is over, but rather just beginning. We welcome the fact that your committee is taking the leadership to be involved in the dialog so that together we may find the correct solution.

I think you'll hear from the testimonies following that a lot of good ideas are starting to germinate and that this hearing, in laying the public record, will be of great benefit, not only to Indian tribes and allottees, but to America in general.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Lester.

Mr. Payne.

STATEMENT OF FRED PAYNE, CHAIRMAN, TRIBAL AFFAIRS AND SURVEILLANCE, GENERAL TAX COMMITTEE, ROCKY MOUNTAIN OIL AND GAS ASSOCIATION, SALT LAKE CITY, UT

Mr. PAYNE. Honorable Chairman and committee members, let me thank you for the opportunity to be here today and to address you.

I am an independent in the oil and gas industry. I provide land services to the oil and gas industry under contract, so I am not directly associated as an employee of an oil company. I am the current tribal affairs chairman, General Tax Committee, for the Rocky Mountain Oil and Gas Association which is commonly referred to by its acronym, RMOGA.

Our association covers eight States. We have six offices located throughout those States and we cover all facets of the oil and gas industry.

My first encounter with the tax bills, S. 1203 and S. 1650, were in meetings that I had with Mr. Perry Baker who is the reservation superintendent for the BIA at the Uintah and Ouray Reservation in eastern Utah. That reservation is the second largest in the United States.

I subsequently investigated, through many of the clients to whom I report, to determine what their information and feedback would be concerning those bills and was surprised to find that they had none. They really didn't know much about them, which I guess is really not all that surprising. My subsequent study of those bills, and the information that I have been able to acquire, leads me to believe that they're a very appropriate approach to dealing with the economic issues that face tribes and most native Americans today.

I would certainly hope that these bills are a part of an overall plan to address the conditions and the issues that have precipitated the need for those incentives. It's been my experience—let me back up just a little. I instituted a detailed study of Indian affairs as they impact the oil and gas industry just 1 year ago in February 1989. I did so because of the economic injury my business had seen from the budgets that had been dismissed or moved with regard to work that was scheduled to be performed on reservations and near reservations by the oil and gas industry. My subsequent reportings to my various clients in the oil industry was to encourage those, at least those with vested interest on the reservations to fund a continuing effort on my part to study the activities that had impinged upon their efforts. It's difficult to evaluate how many millions of dollars have left the reservation and gone to other areas because they are perceived as being at less risk and have higher profit potential.

When I inquired of the companies, who were cancelling their budgets or moving their budgets, they said that the double taxation issue had depreciated the value of doing business with the tribes and on the reservation. That coupled with the other perceived risks, it just wasn't worth while and those moneys would be expended elsewhere.

My studies have also shown that, regarding Indian affairs, there's generally been a reactive activity on the part of State and Federal Governments. We deal with problems as they arrive. There is very little indication, as far as I can see, that there is advanced planning and consistency of policy in dealing with those problems.

But the most significant thing I have learned is that the issues and circumstances that precipitate those problems are rarely addressed, very rarely addressed.

The drop in oil and gas prices has put an economic squeeze on the tribes that is very rarely understood by my industry, by Government—county, State, and Federal—as far as I can determine. Unless you're on the reservation and dealing with those people, you don't understand just how severe they are.

There's been a decline in the agricultural and livestock businesses that represent a recession for all Indian tribes. As far as I can determine, there has been, at the same time, a decline in oil and gas prices. So the energy resources tribes have also suffered the recession that the oil industry has suffered. You combine the two of those and you have a real depression on Indian reservations, the results of which are tantamount to those conditions of the 1930's for the tribes and its members.

While the underlying problems of Indian affairs are economic, there are fundamental factors that contribute to every one of those problems. Those problems really aren't understood by very many people, and they're dealt with by even fewer people. Those problems could continue to adversely affect the economic status of all native Americans and they're having a very detrimental effect on all of the business enterprises which interface the economic interests of the tribes.

The lack of an appropriate interface between general economy and the tribal economy is devastating. Without it, these bills, these incentives, will not solve those economic problems.

My studies indicate that the most successful results for producing income for native Americans and for tribes has been the development of energy resources. The oil industry has developed a great many of our petroleum resources, has produced for a long period of time on the reservations, and has provided many jobs, as well as a great deal of income for the tribes. It has also provided appreciable profits for the industry.

With the advent of the *Cotton Petroleum* decision, the dual taxation has not only created an additional tax load to the profitability of tribal interests, but it has created an air—or an atmosphere—that is perceived by the oil industry as extremely high risk in doing business. There is the perception that those taxes can be increased at almost any time and that additional taxes can be added.

The economic problems that have come into play have created an adversarial air between the oil and gas industry and the tribes, and the oil and gas industry and State governments. There has been little, if any, real communication that has come into existence between the business interests, the State governments, and the Federal Government to communicate the real issues and real problems that are impacting this economic condition.

I recently completed—on my own—a study of the decline of production on the Ute tribal wells as compared to the decline of oil and gas production on the non-tribal wells in the same area. All of these are within the Uintah and Ouray Reservation boundaries. I presented those findings to the Ute Tax Commission just 2 weeks ago. It's alarming when you see what the imposition of that severance tax and these issues has done to the decline of production and the failing recovery of those resources.

As I said before, the basic problems of Indian affairs are the underlying factors that are not being addressed. Primary to those is an information void that exists with all parties that are involved in the activities dealing with Indian affairs. It's surprising to me that I am here today addressing it because in 1 year's time of studying Indian affairs as they impact the industry, I suddenly find that I am the selected individual to be here. Anyone who can be considered "an expert in Indian affairs" after only 1 year of study for these issues that are so complex—well it is alarming.

Senator McCain. We have members in Congress that have that after 1 day. [Laughter.]

Mr. Payne. Well, sir, I spent a good deal of time investigating not only the basic issues impacting my industry, but the issues that contribute to those. As I said, this information void is outstanding. It exists in State government. There are only a few industry people who even come close to understanding what some of the economic issues are with respect to Indian affairs. I have only found one or two who are willing to expend the time and the funds necessary to continue the study that I began. Those people are ahead of their time in these interests. The management of those companies foresee that there will be continuing problems and growing problems.

There is a symbiotic relationship that exists between the oil and gas industry, in resource development activity, and the tribal interests. Many people in the oil and gas industry now recognize that symbiotic relationship and realize that anything that's detrimental to the interests of the Indians is also detrimental to the interests of the oil and gas industry. I am afraid very few other people have acknowledged this. Many of the Indians have not. It's essential that we understand and acknowledge that symbiotic relationship.

At present there is very little effective communication—

Senator McCain. Sir, do you want to summarize more of your—

Mr. Payne. I understand. I am sorry.

Senator McCain. Mr. Payne, I appreciate everything that you're giving us, but we do have two more panels.

Mr. Payne. I understand.

Let me summarize by putting it this way. There is a current fear of doing business with tribes. It prevails in the oil and gas industry. If that same concern, and that same fear, exist in other businesses and industries we're not going to solve the problems we're addressing with this current legislation. I highly recommend that there be an interrogation of those companies now doing business with the tribes, that they be polled, and that their inputs be a part of the investigation of this committee to determine how effective you expect this legislation to be.

I have filed several reports with clients concerning the activities that I have conducted. I would be glad to make those available to anyone who is interested.

Thank you very much.

[Prepared statement of Mr. Payne appears in appendix.]

The Chairman. I wish you will, sir.

Thank you very much.

Mr. Berkman.

STATEMENT OF MARK BERKMAN, SENIOR CONSULTANT, NATIONAL ECONOMIC RESEARCH ASSOCIATES, SAN FRANCISCO, CA

Mr. Berkman. Thank you very much, Mr. Chairman.

I am here today on behalf of the Native American Tax Initiative Task Force to discuss the effects of State taxation on Indian resources and economic development. I base my remarks primarily on my work with the Crow Tribe in its successful lawsuit to strike down Montana's severance tax on Indian coal production and on my work for the Wind River Reservation in Wyoming.

The basic point of my testimony today is that State taxation of Indian natural resources unquestionably limits the tribal abilities to manage their own resources and the income that tribes can derive from their own resources. This means that the tribes' goals of economic self-sufficiency are thwarted, that the tribes' efforts to protect the environment are weakened, and that the tribes' attempts to preserve tribal culture are threatened.

Let me just, in simple terms, explain why the tax is so limiting. This is the point that was lost in the majority of the Supreme Court in the *Cotton Petroleum* decision, and I think my simple examples suggest that they need to go back and take Econ 101.

Consider an example where you're an oil investor and you're looking at two parcels of land in the same State—one on reservation and one off reservation. The parcel off the reservation imposes a 8-percent tax on your production. However, if you move just across the boundary into the reservation you're going to pay an 8-percent State tax and an additional 6 percent tribal tax. Quite clearly you, as an oil investor, are going to opt to produce on the off reservation site, also assuming that we're talking about similar quality of oil and similar extraction costs. It's really as simple as that, and it's hard to understand why that point needs to be made so often.

In addition to this simple case, you can look at actual practice. Mr. Payne's example is a good one. Perhaps a more dramatic one would be the experience that Montana and Wyoming have had with the coal severance tax. Prior to 1976, both States were producing roughly the same level of coal and taxing at roughly the same level. At that point, Montana invoked a much more substantial tax so that the effective tax rates rose upward 17 percent versus 30 percent. What happened after that is quite compelling, and I believe a chart which is attached to my written remarks demonstrates this.

Montana's production went flat. They had the same production level in 1980 as existed in 1976. Wyoming, on the other hand, with its much lower tax level, saw tremendous growth in production. From 1976 to 1980, production rose from roughly 30 million tons to 95 million tons a year.

That lesson was not lost on Montana. Several years ago they began to review their taxes. Initially, in something of a test case, they lowered the tax rate for new coal contracts to encourage production. When they saw production actually rise as a result, they moved ahead and reformed the entire tax structure so that by 1991 the severance tax in Montana will be at 15 percent compared to the 30-percent rate imposed in 1976.

I don't think there's a more compelling example of how important tax can be to encouraging or limiting energy production in States and within reservations as well.

I wanted to make a second point related to that, here. During the Crow case, Montana argued that the reason the Crow had not been more successful in producing coal was not the tax, but that they were viewed as a risky venture partner. They felt that the tribal government was unstable and that, in itself, scared away potential investors.

Well, I would not argue that point. If there is that perceived risk, that puts the tribe in an even more difficult position. It has to be able to respond to that risk by offsetting it with a lower cost. It can offset simply by adjusting the tax rate if it has control over taxes. Unfortunately, when the States impose a substantial tax, there is very little room for the tribes to maneuver and strike that balance between risk and return that they need to.

I also wanted to point out that, while my examples so far, and the examples that we've heard today, relate to energy development, the importance of taxation as a tool in economic development pervade all other economic sectors as well. So even tribes that do not have natural resources, or even those who do and should diversifiscal year, need to look to tax policy tools to promote economic development. I think that's something that this committee is recognizing and that this legislation is considering.

While I think the evidence on how tax incentives work is mixed—some programs have worked quite well and others haven't—it's clearly a very important tool, especially in light of the *Cotton Petroleum* case, and needs to be pursued in a very serious manner.

My last comment is simply this: One concern that I have heard again and again from people like the multi-State Tax Commission and others, is that the States obviously have interest here. The States do provide services to the reservation and they need to be able to cover the cost of those services.

That is certainly a legitimate argument. The question comes in how that should be done and whether or not the States' needs to meet those costs should interfere with tribal economic development. I think that's precisely where the Federal role rests. The Federal role is to both recognize the need for economic development in the tribe and also realize that there are State interests to be addressed as well. I encourage you to read my more extensive remarks on all these points.

Thank you.

[Prepared statement of Mr. Berkman appears in appendix.]

The Chairman. Mr. Berkman, I thank you very much. We are discussing a matter of grave importance. All of us have studied the *Cotton Petroleum* decision, and we are most grateful to the vice chairman of this committee for taking the initiative in introducing this measure, so I would like to first recognize the vice chairman.

Senator McCain. Thank you very much, Mr. Chairman.

Mr. Lester, welcome. It's nice to see you again. Thank you for your very important testimony.

If this legislation, both S, 1203 and S. 1650, are enacted as introduced, will the incentives stimulate economic and business development on Indian lands, in your view?

Mr. Lester. Yes; they would.

Senator McCain. Do you think it's of great importance that some legislation along these lines be adopted?

Mr. Lester. Our view is that these are very important, but they are important first steps. We don't see them as the panacea, but they put additional tools in the hands of tribes and their professionals to use to develop tribes according to each local tribe's own priorities and values. There are some major issues that go unaddressed in those bills such as infrastructure development, the public investment that must accompany private investment, targeted incentives to local, individual, and tribally owned enterprises that foster development at the local level.

But both bills are very essential at this point in the ongoing effort to provide tools to tribes to develop their local economies and to bring the blessings of economic prosperity to their people.

Senator McCain. Thank you very much, Mr. Lester, and thank you for all your many contributions that you have made for a long period of time. We're very appreciative.

Mr. Payne, should Congress prohibit both tribal and State taxation of oil and gas?

Mr. PAYNE. I don't believe so.

Senator McCAIN. Should we permit one and not the other?

Mr. PAYNE. My personal opinion?

Senator McCAIN. Yes.

Mr. PAYNE. Yes, sir; my personal opinion is that one should be and that the other should not. Quite honestly, I haven't had a chance to thoroughly research the legislative background with regard to the tribe's ownership of resources but it appears to me that the State taxation of severed minerals in addition to the tribe is unduly burdensome to the industry. As it has been pointed out, it's having a dramatic impact on investments on the reservation.

The Utah legislature just passed House Bill 110. I was very active in the draft of that bill. It's an incentives bill, an earned tax credit bill, for oil and gas industry investment. That bill is already showing the fruits of those incentives in increased activity and in the recovery of resources. Dr. Diane Nielsen testified at State legislative hearings concerning the loss of resources as a result of the current taxation. That was one of the issues which helped to convince the State legislature that the bill should pass.

Senator McCAIN. Do you agree with that, Mr. Berkman?

Mr. BERKMAN. Yes; I think it's quite clear that the tribes, in order to manage their own resources, have to be in control of the tax. At the same time, recognizing that there is legitimate State interest, I think there are other avenues for the State to ensure that they're compensated for services that they provide to the reservation.

Senator McCAIN. Do you think, Mr. Berkman, that we should amend this legislation to provide for a Federal tax credit for tribal and/or State taxes paid on reservation based business activity?

Mr. BERKMAN. To be honest, Senator, I haven't studied the bills that carefully to be able to offer my opinion on tailoring it that way. It strikes me that creating some kind of broad based tax incentive on the reservation makes sense as a first step.

Senator McCAIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Listening to the testimony, I could not help but think that if we went out of our way to draft legislation to make it almost impossible for any ethnic group to get into business in the United States, all we have to do is to look at the Indian experience. [Laughter.]

It is there. It would take an evil genius to come up with what we have in our book. What we are trying to do is to just do away with a little of that, so I will start from there.

I did a little research 2 years ago and found that the unemployment picture was 57 percent. What is it today? Is it better or worse?

Mr. LESTER. With the reservations that the 44 tribes of the CERT organization represents, the average range is between about 45 percent and as high as 90 percent in certain seasons of the year.

The CHAIRMAN. Is the suicide rate still eight times the national norm?

The answer is yes?

Mr. LESTER. Yes.

The **Chairman**. Mr. Lester, if a tribe opened up its own gas and oil production company, would that company be subject to State or Federal taxes?

Mr. **Lester**. That company, if it were producing its own oil and gas, and was owned by the tribe, would not be libel for State and for most Federal taxes.

The **Chairman**. You would believe, using the same rationale in recognizing the sovereignty of tribal governments, that *Cotton Petroleum* decision has no place in our books?

Mr. **Lester**. I would agree with the other witness that the justices might need to take Economics 101 and look at the basic premise of Indian law and come to a more rational decision. That would be that the tribal tax should not be infringed by State taxes.

The **Chairman**. I come from a very simple school of economics that if we provide a person with sufficient tools to help himself, that person becomes a better person, and it would cost the Government much less. Somehow that lesson has not gotten through OMB. [Laughter.]

I can assure you, that although this committee does not have primary jurisdiction over this matter, the author of this measure and I will personally appear before the Finance Committee to carry your case across. I am certain that our colleagues will listen to logic, equity and justice, having all of these things in this.

Do you have any statistics to suggest what the economic picture would have been in the past 12 months if the *Cotton Petroleum* decision had not been handed down by the Supreme Court?

Mr. **Payne**. I have information from some investigations that I have personally made. I have a copy of a report that I presented to the Ute Tribal Tax Committee just 2 weeks ago. You have to understand that I am one individual and I don't have a resource staff of 30 or 40 people. I did interrogate the State production records, and I very carefully evaluated the decline of production from wells in the Uintah Basin on tribal interest land with those of non-Indian wells. In the most conservative group that I could find, I found that the decline, because of lack of investment on Indian lands, was 22.2 percent versus an 8 percent decline on non-tribal wells which did not suffer that dual taxation.

I found instances with various companies that ran as high as an 80-percent decline.

The **Chairman**. Would you say that the major cause of this decline was this disincentive of the duel tax?

Mr. **Payne**. It was one of the principle factors. It's not so simple that you could say that it's all due to that, because there are complex geological considerations as well. But the environment that has been created, and largely the addition of the severance tax, has generated those conditions.

The **Chairman**. Mr. Berkman, do you have similar studies that you could provide us?

Mr. **Berkman**. I have not conducted any recent studies post the *Cotton Petroleum* decision, but that conclusion seems likely to me, given what I have observed in the past.

The **Chairman**. All of you are in favor of something being done?

Mr. **Payne**. Yes, sir.

Mr. **Berkman**. Yes.

The CHAIRMAN. I just want you to know, sir, that if I have anything to do about it, there won't be any Federal or State taxes on this. Then I think a lot of our problems would be resolved, but we are not authorized to do that here. [Laughter.]

Maybe we will have a benign dictatorship one of these days. [Laughter.]

Until then, I thank you very much, sir. [Laughter.]

Now we will have the second panel consisting of Bill Anoatubby, Governor, Chickasaw Nation, OK; Jacob Viarrial, Governor, Pojoaque Pueblo, Santa Fe, NM; and Lawrence D. Wetsit, chairman, Fort Peck Executive Board, Poplar, MT.

Distinguished leaders, I welcome you on behalf of the committee. May I first call upon Governor Anoatubby.

STATEMENT OF BILL ANOATUBBY, GOVERNOR, THE CHICKASAW NATION OF OKLAHOMA, ADA, OK

Mr. ANOATUBBY. Thank you, Mr. Chairman.

The CHAIRMAN. It is always good to see you, sir.

Mr. ANOATUBBY. It's very good to see you, too.

It's very much a pleasure to come before the committee and an honor to represent the great Chickasaw Nation in Oklahoma. Often times the Oklahoma tribes are left out of some of the legislation, and we work with this committee and others to be sure that the tribes in Oklahoma are given the same opportunities as other tribes.

I think you stated the case more clearly than I can state it. It's a difficult situation when Indian tribes who are dealing on a government to government relationship with the United States of America encounter so many approaches to that government to government relationship. In Congress oftentimes we are treated as a government. When we deal with the Bureau of Indian Affairs, there is a quasi government approach to the treatment of the Indian tribes. But what we find out is that there is no uniform treatment of that governmental status that Indian tribes are supposed to have. You stated it very eloquently. One thing that we can support is the uniform treatment.

We appeared here just about 1 year ago before the Senate Special Committee on Investigations of the Select Committee on Indian Affairs and we talked exclusively about some resources, the Arkansas River bed in particular. When we talked about funding, for instance, the tribes have been told that we have this government to government relationship and there are certain things that the Federal Government will provide. I read with interest the study that came out of this committee regarding the funding that comes to Indian tribes and how much we really have digressed, as far as funding is concerned, percentage wise, as opposed to all other Indian programs.

We, as a government, face the same problems as any government. We have a constituency that we must serve and that we want to serve. There must be a way for us to raise revenue. We, the Chickasaw nation particularly, are not pleased about our dependence on funding from the Federal Government any more than any one else would be. We're working very desperately at this time to move away from that dependency. Economic development is one area that we find to be the key to getting away from that dependency.

A fundamental basis of government is the ability to raise funds through taxation. The *Cotton Petroleum* case basically said that we, as an Indian nation, no longer have the right to raise those taxes unless they're subordinate to the taxes of the other governmental entities around us. Does that, in itself, make the statement that we have a true government to government relationship with the Federal Government and that we are only subordinate to the rules made by Congress? In my opinion, no.

It's obvious that Congress must do something about this problem. That's why I am here today: to ask you to please continue your efforts to improve the conditions in Indian country through providing the various program dollars that you do to assist us, and to continue to assist us in the area of economic development and in the area of taxation.

The bills that you have before you—I was very pleased to see you working with the Administration to possibly come up with a bill that both of you can live with. As we all know, when two forces come together, especially if it's Congress and the Administration, and someone loses—and in the case of the Indian tribes, when Congress and the Administration come together with a force, the Indian tribes lose. We desperately need to work cooperatively with Congress and with the Administration.

This is the era of self-determination and self-reliance for Indian nations. We can't be self-reliant and self-determinate if every opportunity that we find—in the terminology—we're cut off at the pass by someone because of a special interest that they have, or for reasons that we can't even identifiscal year other than economic gain. If we're expected to continue our effort of self-government and self-reliance, then tax credits—such as the one described today, incentives that you have proposed in your bill, as they have been refined in your work, in the committee as well as with the Administration—is the type of thing that is necessary for us to succeed.

The provisions in the Indian Finance Act, in revising some provisions in the Indian Finance Act, were wonderful.

There's one particular act that has impeded the progress as far as economic development is concerned, and that is the Tribal Governmental Tax Status Act, when it comes to the provision of issuing Government guaranteed bonds. This committee and the whole U.S. Congress approved amendments that would allow the BIA to guarantee bonds that could be issued at a lower interest rate. That would be the incentive for people to buy the bonds. Through some technicalities, the Bureau of Indian Affairs has not put money into the budget. There was no money in fiscal year 1990 to guarantee bonds for Indian tribes. There's no money proposed in fiscal year 1991. So sometimes even the efforts of this committee and of Congress go to no avail if those provisions are not followed.

I would hope that this committee and Congress would consider that. Even the passage of these bills that you're talking about today, once the provisions are passed, you need to be sure that they're carried out as intended.

I appreciate the efforts of this committee and the attitude that has been demonstrated here today in regards to Indian nations, the problems that we have, and the need to do something about it. The Chickasaw Nation will definitely work with you in any way that we can to see that some of these things are carried out.

A uniform treatment when it comes to a government to government relationship is necessary. All of the tribes across the United States need to be given the opportunity to participate in the economic development programs that this committee and Congress enact.

Thank you.

[Prepared statement of Mr. Anoatubby appears in appendix.]

The CHAIRMAN. Thank you very much, Governor.

May I now call upon the Governor of the Pojoaque Pueblo, Governor Viarrial?

STATEMENT OF JACOB VIARRIAL, GOVERNOR, POJOAQUE PUEBLO, SANTA FE, NM

Mr. VIARRIAL. Thank you, Senator. It's nice to see you and Senator McCain again.

I would like to first thank this committee for the opportunity to come to the CBDG program earlier. It's from that particular program that Pojoaque Pueblo got its start in economic development about 10 years ago.

Let me just give you a brief background on the Pueblo of Pojoaque.

It died during the Pueblo Revolt of 1680. It was restarted again in 1710 and with a lot less population, and the population has fluctuated over the centuries. At the end of the last century we were again in an abandoned state. In 1932, we were started again with 14 members. We now have a population of 180. However, our service area is about 20,000 people that are within the exterior boundaries of our reservation or near the reservation.

The Pojoaque Pueblo has done real well in economic development. We have a 15,000 square foot supermarket. We have a 200 space mobile home park. We have a tourist information center. And we have a very good police program. We lease several kinds of leases to non-Indian business people.

We need about—2 years ago we needed about $300,000 to run the administration of the Pojoaque Pueblo. That included the police system, water system, sewage system, and all these kinds of things. Today we are probably closer to about $500,000 that we need for our administrative costs.

We didn't have anywhere to get these moneys other than what should have been profits so that we could expand our businesses. But instead of expanding our businesses, we were sinking those profits into our administration. So we decided to impose a tax which we felt we had every right to do.

The first tax we imposed was a tax on our own businesses. We started taxing the tenants of the mobile home park which were about 99 percent non-Indian families. We run 100 percent occupancy. Maybe we get one or two vacancies a month, but we fill them up right away, so it's 100 percent occupancy.

And I do want to mention again that 99 percent of the occupants are non-Indian. So we started a 4-percent tax on the mobile home park, on the supermarket, and our tourist information center. That was received well with the non-Indian service area that we service.

However, in our tax code, in our tax ordinance, we indicated that we would also tax the utilities and the non-Indian tenants doing business on the reservation and that we would also tax non-Indians doing business within the exterior boundaries. While the first two aspects of the tax policy went quite well, and now that we're into taxing our non-Indian tenants, we're having a lot of problem with that.

The tenants have banded together and plan to fight us on this because they're pretty much convinced that they're going to be double taxed. That, indeed, is not our intention. It is not our intention to double tax our tenants.

In addition, the non-Indian businessmen who have their businesses on our land have joined our tenants and also feel that we're going to double tax them. We've had several meetings to educate them that we will not. In order to keep peace in the community, we've pretty much taken the stand that,

> We don't want to get you mad at us because then you'll move away elsewhere and we won't have any businesses on our reservation. That would pretty much kill the tribe. We will not have any income.

I would like to mention that even though our needs are great, we are 85 percent to 90 percent self-sufficient at this time. We depend on the Federal Government very little for any kind of support. We're very proud of that. But with this new tax rule, it's really going to hurt us, especially if the people that own businesses within the exterior boundaries—if they leave then that pretty much kills us. We don't have any other resources that we can turn to other than our economic development.

Basically that's what I wanted to say. I would just like to point out to this committee, and to the leaders of our country, that we do have a great problem, and we don't have many people who will listen to our concerns.

One point I forgot was that we tried negotiating with the State. We don't want to go into litigation because of the *Cotton Petroleum* decision, but they've been very reluctant to negotiate with us mainly because they feel that they're pretty safe with this Supreme Court decision. They feel that they have certain interests in Indian land. They also say that they provide services within the reservation and they need the revenue.

I might add that we don't get any services from the State. Once in a while when it snows, they will come and clean the highway, but that's the extent of the services that we get. We provide more services to those 20,000 people than the State does. I am talking about the roads, the sewage, those types of things.

The State says that it needs the revenues, but so do we. Either the Federal Government or your people needs to come up so that the State and the tribe could work together without having to fight with one another because we're tired of fighting with the State. They hit us up on just an old front of trying to diminish our sovereignty.

This concludes my oral statement. I would be happy to answer any questions that you or any members of the committee may have. Thank you again for the opportunity to appear before you today on this very important issue.

Thank you, Senators.

[Prepared statement of Mr. Viarrial appears in appendix.]

The CHAIRMAN. Thank you very much, Governor.

Now may I call on Chairman Wetsit.

STATEMENT OF LAWRENCE D. WETSIT, CHAIRMAN, FORT PECK EXECUTIVE BOARD, POPLAR, MT

Mr. WETSIT. Mr. Chairman and members of the committee, I am Lawrence Wetsit, chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. I am the chairman of a reservation of about 2 million acres of land of which we have about 5,000 Indians living on the reservation.

My tribe, this past year, has had an operating budget of about $5,800,000. My tribe is a very responsible government. We spend a substantial portion of our tribal budget on essential government services. With the recent decision of the *Cotton Petroleum* case, I don't know how much longer, through economic development efforts, that the tribes can continue to provide some of the services that we do now provide for members and residents of the reservation.

Some of the services that are provided by my tribe on the reservation include public safety. We operate a law enforcement program. We also support two voluntary fire fighting units. And we operate a sanitation program which includes a solid waste disposal program. For the outlying areas, the solid waste disposal program provided by the tribe is the only disposal available.

Second, my tribe, in the area of health care, provides renal care and alcohol treatment programs. As you know, the rate of diabetes and the demand for dialysis is very high among Indian people. If the tribes did not provide this care, dialysis would have to occur at very great distance and inconvenience to our dialysis patients. Through our alcoholism treatment program, we provide inpatient treatment as well as outpatient treatment for use in adults. We also hire alcoholism counsellors in the local school districts.

One of the other things that our tribe provides are social and welfare services. We provide nutritional and other services for the senior citizens on the reservation. We also offer cold weather aid to destitute members and disaster assistance to the community when called upon.

My tribe also provides educational assistance through the operation of a community college and a college extension program at the reservation. We also provide education incentive awards to Indian students on the reservation and off the reservation.

The Fort Peck tribes operate programs to enhance the environment of the reservation including animal control services and an Office of Environmental Protection which monitors air and water quality on the reservation.

We operate a transportation system to connect the various communities on the reservation for both Indian and non-Indian alike.

The tribes have collected a substantial portion of our revenues from oil and gas bonuses, lease rentals, and royalties. We also operate, on tribal land, our own oil and gas operation. We also have a number of agricultural leases. Since 1982, we have been imposing a severance tax on oil companies doing business on reservation trust lands, and this last year our severance tax payments amounted to about $357,000. In 1987, the Fort Peck tribes adopted a utility tax. In this past year, we've collected on that utility tax $1.1 million. Through our taxing efforts we raise about 25 percent of our budget which goes toward some of these essential government services.

The recent Supreme Court decision in the *Cotton Petroleum* case has been disastrous for our tribe. It discourages economic development on our land and in the State of Montana. As you are all probably aware, Indian lands are the most destitute and the poorest lands in the State of Montana.

Since the *Cotton Petroleum* decision, my tribe has tried to do a number of things to promote economic development on our lands which includes reducing our royalty rate in an attempt to attract mineral lessees to the reservation. Even with this effort, a number of companies have expressed no interest in leasing our lands, and some of the existing oil producers have ceased or reduced their activities. The only way that a tribe could avoid the disastrous Cotton Petroleum effect would be for us to forgo entirely our right to tax. For us, we think this is a cruel choice for it only provides us a choice of bankruptcy, eventually, for tribal government.

My tribe has been so concerned by the *Cotton Petroleum* decision that we have sponsored several meetings in the State of Montana between Indian tribes, State officials, and the industry. The intent of these meetings was to seek common ground with which we could address economic development on Indian reservation lands in Montana. We found that the industry representatives were also as concerned as the tribes were with this decision. We also found that the State of Montana is also sympathetic to a solution so long as their own tax revenues would not be reduced.

As our discussion with the State of Montana and with the industry proceeded we found some things that we agreed upon. We felt that to increase the economic development effort in Montana and on Indian reservations, there were a number of things that could be offered by the Federal Government. One of the things that we all jointly agreed upon was some Federal tax credits. First of all there are about five items that we jointly agreed upon.

The first item was tax payments to State, local, and tribal government. The second was a credit for new investments made in plant and equipment. It could be something similar to Senator Baucus' bill, S. 2348. We also agreed upon a credit for wages paid to Indian employees such as Senator Domenici's bill, S. 1650. We also felt that earned income credit, such as Senator McCain's bill, S. 1203, would be helpful. The last item was a credit for royalties paid to Indian mineral owners.

We felt that if these tax credits were adopted that there would be no real economic impact on the Federal revenues. We felt that the impact would be neutral, and over the long run positive, because public, social, and welfare expenditures will eventually drop, health and other associated expenses that are associated with poverty will also decline, and Federal income tax revenues will increase.

Along with the testimony that I have provided to this committee, I have attached an appendix which shows some of the mineral severance taxes that are collected by States on Indian lands which are roughly $50 million to $75 million annually.

In the State of Montana and on Fort Peck—it is our estimate that State of Montana collects in severance taxes over $1 million a year on Fort Peck land. Utility property generates for the State of Montana well over $1.3 million. Property taxes generated by the State of Montana are over $200,000 a year.

I feel that the effects that the *Cotton Petroleum* case has had on Indian tribes, from what we've learned at Fort Peck, has been disastrous for us. Like I said, we are making, and have made, a number of attempts to attract industry to the reservation, but have had little or no results.

Mr. Chairman, I ask that the members of this committee help Indian tribes to end the plight of poverty that we have. We, as tribes, are doing all that we can, and I urge you to act—and to act quickly—to give us some relief.

I am very honored to be here today to present testimony to you. I want to thank you for the opportunity to be here. I would like to answer any questions you may have for me.

Again, thank you.

[Prepared statement of Mr. Wetsit. appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Chairman.

Before proceeding with the questions, I think it is appropriate that at this juncture we place in the record a letter from Ms. Judy Rippingale, Deputy Director for Tax Policy of the Department of Revenue for the State of Montana. This letter describes the process that you have been going through in working together with the State on recommendations to us.

Without objection, this letter will be made a part of the record.

[Letter by Judy Rippingale referred to appears in appendix.]

The CHAIRMAN. We have the statement of the Jicarilla Apache Tribe, and that statement will also be made a part of the record.

[Prepared statement of the Jicarilla Apache Tribe appears in appendix.]

The CHAIRMAN. I would like to also announce that the record of the proceedings will be kept open for 2 weeks—14 days—to permit witnesses and others who may wish to submit additional statements or corrections to feel free to do so.

Senator McCain.

Senator MCCAIN. Mr. Chairman, I just want to thank the witnesses for their important testimonies. I have no additional questions. I think they've stated the case very compellingly. As you heard, the Chairman and I will do whatever we can. We appreciate your leadership under very difficult circumstances.

Thank you, Mr. Chairman.

The CHAIRMAN. I think the testimony here has been important because it shows that Indians can and will succeed if given the appropriate economic tools. What the *Cotton Petroleum* decision did was to take away this economic tool and we will do our best to restore it to you. In fact, Senator McCain and I will be personally appearing before the Senate Finance Committee to testify on behalf of Indian country to make certain that these measures are brought to their attention. Hopefully they will consider them favorably.

With that, I thank you for your testimony. It has been extremely helpful. We will do our best.

Mr. ANOATUBBY. Thank you.

Mr. VIARRIAL. Thank you.

Mr. WETSIT. Thank you.

The CHAIRMAN. Our final panel consists of the chairman of the Navajo Nation Tax Commission, the Peter Korth who will be accompanied by Mr. Bruce Keizer, executive director, Navajo Nation Tax Commission; also Mr. Wes Martel, Shoshone Tribe Tax Commission, Fort Washakie, WY who is accompanied by Mr. Richard Ortiz, Shoshone Tribe Tax Commission.

Chairman Korth.

STATEMENT OF PETER KORTH, CHAIRMAN, NAVAJO NATION TAX COMMISSION, ACCOMPANIED BY BRUCE KEIZER, EXECUTIVE DIRECTOR, NAVAJO NATION TAX COMMISSION, WINDOW ROCK, AZ

Mr. KORTH. Thank you very much for the opportunity to appear before you today in support of this very important legislation.

Due to our climate, we see the incentive provided in these bills as providing the framework for long term development, increased employment, and economic self-sufficiency for the tribe. We think that S. 1203 best incorporates the range of incentives that would trigger immediate development and we strongly urge passage of this bill. We also strongly support S. 1605 and the concept contained therein by Senator Domenici and agree, as the prior witnesses stated, that they should be incorporated into S. 1203.

We've prepared a written statement for the record and your review.

At this time, with your permission, I would like to defer to Mr. Bruce Keizer, the executive director of the tax commission, who will summarize our written statement.

Thank you, Mr. Chairman.

Mr. KEIZER. Mr. Chairman and members of the committee, my name is Bruce Keizer and I am director of the Navajo Tax Commission.

We believe very strongly that the Navajo Nation will be facing a serious revenue crisis within the next 10 years if we are not able to solve some of our economic problems and also, specifically, some of our taxation problems related to dual taxation.

Currently we are dependent on oil, gas, and coal for the vast majority of our tax revenues and also for our royalty revenues.

We have an appendage to our testimony which indicates that within the next 15 years our tax revenues from oil, gas, and coal will be reduced from about $8 million down to about $600,000 a year. Currently those possessory interest taxes and severance taxes account for one-third of our tax revenues.

We believe that in addition to this decrease in revenues, there will be an increase in need for services and infrastructure development. So, consequently, tribes are going to be turning increasingly to taxation to help solve their economic problems and develop infrastructure. Especially we are going to need to develop non-resource related tax bases.

State taxation on Indian lands interferes with the ability of tribes to encourage economic activity and develop revenue generating tax programs. We believe that the double taxation is then inconsistent with the Federal policy of self-determination for Indian tribes and also for economic development on Indian lands.

We have just recently completed a study which is also appended to our testimony which indicates that the States collect approximately $90 million to $100 million annually from business activities conducted on Navajo lands, yet because of the presence of this State tax, we are only able to generate $20 million on that very same activity. As a result, we've also had to waive substantial taxes to our business people who simply would not locate on Navajo nation land because of the double tax.

So the bottom line is that States are going to collect about $1 billion in tax revenues from the Navajo Nation over the next 10 years yet we know, as a matter of empirical fact, that that amount is not being provided in services to the nation.

The presence of the dual taxation currently hinders business development and seriously impedes our ability to develop economically. Businesses find it very difficult to locate on the Navajo Nation when they know they're going to have to pay the dual tax. I have personally been in negotiations with several businesses who have simply said that they could not move to the reservation because they could not afford to pay the double tax.

In addition, the double tax prevents the tribe from devoting substantial revenues to infrastructure development because we're spending our current revenues just trying to meet basic services.

The other aspect is that we are not able to control our own financial situation. Right now we know that about $750 million is being paid in payroll, annually, on the Navajo Nation, but we are not able to keep that money on the reservation. About 90 percent of those funds go off the reservation to border town economies, yet our unemployment rate is anywhere between 38 percent to 50 percent depending on the season.

We have also had, in our tax rate hearings, taxpayers come in and complain about the dual taxation and indicate that they are not going to be able to continue doing business on the reservation if they are going to be forced to pay the double tax. In fact, many in the oil and gas industry have told us that they will not pursue secondary tertiary recovery methods to increase oil production because they simply do not find it economically feasible with the taxes.

We know that, because of the double tax, we are not able to exercise our full taxing authority. As a result, our tax rates have remained constant for the past 11 years. The Navajo Nation has never increased its tax rate simply because we cannot afford to do so.

We believe that a Federal solution is a solution that we need to solve the dual taxation problem that currently exists. One of the things that we have been very happy with is S. 1203, the McCain bill. In fact, President Haskie testified in support of S. 1203 the last time he was here. We feel that that bill has a broad range of tax incentives that is definitely going to increase economic development within the Navajo Nation. We applaud the committee and Senator McCain for proposing S. 1203. We feel that with its investment packed provisions and credits we can generate economic development which will then increase our tax base and move it away from the resource related industry.

We want to thank you for this opportunity to appear before you today and hope that we can move very quickly on this issue of tax credits. We applaud the committee's efforts.

Thank you very much.

[Prepared statement of Mr. Keizer appears in appendix.]

The CHAIRMAN. Mr. Keizer, I thank you very much. I wanted to stay here for the hearing and hear all of the testimony, but I have another engagement and appointment so I will have to leave you. But I wish to thank all of you for taking the time to testify and assist us in this.

I am personally considering three measures that I will draft and confer with the distinguished Vice Chairman McCain. One calls for the outright prohibition of State taxes, the other one calls for a credit if someone pays tribal and/or Federal taxes—that amount will be used as credit on State taxes. The third may sound facetious, but in my mind it is not. We have called upon Indian nations as being sovereign. I am going to try a foreign aid bill. [Laughter.]

I was chairman of the Foreign Operations Committee and I am still the senior member of that committee, so I am going to see and make a test case. [Laughter.]

I would like to see what the Administration says about your sovereignty. If you are sovereign, then I think you should be eligible for foreign assistance. [Laughter.]

And we are much more generous in foreign assistance than in Indian assistance.

With that I bid you goodbye and will now leave this up to my distinguished colleague.

Senator McCain. [Resuming Chair.]

Thank you very much, Mr. Chairman. I appreciate your remarks and I look forward to an interesting hearing before the Foreign Operations Subcommittee. [Laughter.]

The CHAIRMAN. As do I.

Senator MCCAIN. Thank you again, Mr. Chairman. We are very appreciative of everything that you do.

Mr. Martel.

Is that the proper pronunciation?

Mr. MARTEL. Yes; it is, Senator.

Senator MCCAIN. Welcome, thank you. I am sorry that you are last and I apologize for the delay in hearing from you. We had this markup on pending legislation in between. That does not mean that what you have to say is any less important than any other witness.

Thank you for being here.

Mr. MARTEL. I wish I could save the best for last.

Senator MCCAIN. There you go. [Laughter.]

STATEMENT OF WES MARTEL, ACCOMPANIED BY RICHARD ORTIZ, SHOSHONE TRIBE TAX COMMISSION, FORT WASHAKIE, WY

Mr. **Martel**. Senator, I appreciate the opportunity to be here today and to submit testimony on the record in regard to S. 1203 and S. 1650. My capacity is the cochairman of the Shoshone Business Council and I am also a member of the Wind River Tax Commission.

We have also another pressing matter which we feel ties directly into economic development and that is water on our reservation. But I will allow Mr. Ortiz to get more specific the tax issue.

The economic development and self-determination aspects of these two bills I think are extremely important and the degree of that varies from reservation to reservation. We at Wind River believe that we can be one of the first reservations in this country that can afford themselves on economic development and the ability to exercise our sovereign authority as tribal government is extremely important to that.

So I would like to commend the committee in regards to the initial effort on S. 1650 and S. 1203 and also look forward to future activities where we can work together to try to change Congress' attitude, and the States' attitude, regarding the dual taxation problem and how it affects Indian economic development and self-sufficiency.

I'll turn it over to Mr. Ortiz now.

Senator **McCain**. Thank you, Mr. Martel.

Mr. Ortiz.

Mr. **Ortiz**. Thank you, Mr. Chairman.

Committee members and staff members, on behalf of the Joint Business Council and the Wind River Tax Commission of the Shoshone and Arapaho Tribes on the Wind River Reservation, I would like to thank you for the opportunity to testifiscal year today.

We're here to discuss the problems that we see the *Cotton Petroleum* decision has done to reservations and that being, number one, affecting the tribe's ability to raise needed revenues to meet the demands of its people.

The Wind River Reservation covers approximately 2.2 million square acres in north central Wyoming. The population of the reservation is approximately 7,800 and are comprised mostly of Shoshone and Arapaho tribal members. The annual family income is $6,277.00

The basic problem that prevents economic development on the reservation is a lack of infrastructure services. Due to this lack of infrastructure services, a number of socioeconomic problems exist on our reservation, but not only on our reservation. Those problems are on all reservations. At least 70 percent of the people are unemployed. Mr. Chairman, 75 percent of our people are at or below the poverty level, as published by the Office of Management and Budget. Also, 30 percent of our people are directly affected by substance abuse. Only 38 percent of our people have achieved a high school diploma.

In contrast to these socioeconomic problems that we have on our reservations, the tribes have a large number of assets, those being a large work force; natural resources such as oil and gas, water, timber; but one of the most important things that they have is a concerned, dedicated business council—tribal government.

There is no doubt in the minds of our tribal leaders that with proper incentives to induce economic development, tribes can pull out of the vicious cycle of poverty.

I would like to discuss, briefly, the enactment of Ordinance 39 which established the tribal taxes on Wind River.

On December 12, 1978, the Joint Business Council enacted Ordinance 39 which imposed a .5 percent privilege of doing business tax on companies operating on Wind River for oil and gas purposes. That ordinance was effective April 2, 1979. On March 10, 1982, the Business Council increased the tax rate from .5 percent to 4 percent. Prior to that all the major oil companies on the reservation challenged the tribe's sovereign right to tax.

In the meantime, the Federal District Court ordered all the taxpayers to start paying the tax payments into an escrow account and controlled by that court. Subsequently the Federal District Court ruled in favor of the tribes. The tribes received no funds until approximately June 10, 1986. Since that time the tribes have collected approximately $33 million in severance taxes.

Since that victory, the tribes realized that there was an opportunity here to increase the revenues to meet the demands of the people. They amended Ordinance 39 and increased the tax rate from .5 percent to 4 percent plus the amounts imposed by Wyoming and its subdivisions. Wyoming and its subdivisions imposed a 6 percent, on average, severance tax, on average 7 percent ad valorem tax, and a .5-percent conservation tax thus bringing the total tribe tax burden to 17.5 percent. In addition to the State tax burden of 13.5 percent, the overall tax burden was 31 percent.

The tribes realized that if they imposed this tax, that many of the producers would move off the reservation either immediately or within the next several years.

At that time the Joint Business Council decided to impose the 17.5 percent severance tax, collecting only 4 percent and issuing a credit for the amount paid to Wyoming and its subdivisions which, since the middle of 1987, has amounted to over $10 million.

The Wind River Tax Commission then began to explore alternatives to alleviate this problem of dual taxation on the reservation. In contrast, and in contradiction to what the Bureau of Indian Affairs has testified today, there are a number of tribes, including these two tribes, that have gathered the hard data facts that the different various committees—the Senate Finance Committee, the House Ways and Means Committee, the Joint Tax Committee, and the Joint Economic Committee—desire these analysises showing revenues derived in the form of taxes and funds expended in the form of services.

On Wind River, we have conducted a study that shows that the State of Wyoming, since January 1, 1968 through December 31, 1987, have taken off over $182 million in taxes and provided $113 million in services. So there's a huge discrepancy of approximately $73 million that has flowed off the reservation and Fremont County where the reservation mostly exists. We feel that this exodus of funds has hindered the productivity of the reservation and the economy of the reservation.

In February 1988, the Wyoming Supreme Court issued a decision on the Big Horn Water Rights adjudication. This was prior to the *Cotton Petroleum* decision. The tribes entered into negotiations with the State of Wyoming over water and tax matters. Prior to Cotton, on February 17, 1988, the Shoshone and Arapaho Tribes entered into a one year interim agreement with the State of Wyoming to alleviate this tax burden and to resolve some other water issues. The tribes were successful in that the State of Wyoming lowered approximately by 75 percent its severance tax rate, from 6 percent to 1.5 percent. The tribes increased their tax rate correspondingly.

This was one attempt by tribes and States to negotiate a settlement. It was effective prior to the *Cotton Petroleum* decision. After Cotton, the State of Wyoming no longer desired to negotiate with the tribes in good faith on the tax issue, as they feel that the *Cotton Petroleum* decision allows them the right to tax tribal activities.

The impact of this decision has greatly reduced the tribes' ability to dictate its own destiny.

Senator McCAIN. Please, could you summarize some of your testimony?

Mr. ORTIZ. Yes, sir.

The *Cotton Petroleum* decision has severely limited the tribe's authority to increase tax rates and provide essential government services.

Some of our companies have testified to us that they would move immediately off the reservation and reduce any future activities they may have with the reservation.

As I said, previously, we have tried to negotiate an agreement with the State of Wyoming, but our tribal leaders believe that S. 1203 and S. 1650 are both vehicles that can allow tribes to induce economic activities on reservations and resolve the problem of self-determination and economic self-sufficiency.

However, both of these bills were prior to the *Cotton Petroleum* decision and may need some refinement. We would urge that the committee now allow its staff members to work with tribal leaders to come up with a more sound bill after Cotton.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Ortiz appears in appendix.]

Senator McCAIN. Thank you, Mr. Ortiz. I know you and Mr. Martel as well as Mr. Korth and Mr. Keizer came a long way and I am very appreciative.

Mr. Ortiz, on this issue of the dual taxation, of all the options that we could have, what would be your first preference other than total prohibition of State taxes? Would you have any ideas as to what options we could explore?

Mr. ORTIZ. I think a tax credit issued to taxpayers for amounts they pay to States would be one avenue. That would be my personal preference if there was not a complete prohibition of taxes imposed by the States.

Senator McCAIN. Mr. Keizer, do you agree with that?

Mr. **Keizer**. Mr. Chairman, I think that would be a good alternative. I think that the Navajo Tax Commission has indicated that we strongly support the provisions of S. 1203 which provides investment tax credits and also nonrecognition of game provisions combined with an income tax exclusion provision that we've strongly supported and will continue to support.

Senator **McCain**. Do you agree with Mr. Ortiz in that S. 1203 and S. 1650 need to be revised in light of this dual taxation issue?

Mr. **Keizer**. I think that as far was S. 1203 and S. 1650 are concerned, one of the things that we'd like to see is that in S. 1650 the provisions, as far as job credits are concerned, be incorporated into the McCain bill so that the total package would be of greater benefit. I guess some of those discussions concerning specifics at mark up could be made, but in principle we are very much in support of S. 1203's tax provision.

Senator **McCain**. Mr. Martel, are things getting better or worse as far as your reservation's economy?

Mr. **Martel**. Things are getting better, and as tribal leaders, we have to take some of the initiative. We can't always, I feel, run to Congress and look for solutions from Congress. We have a trust responsibility of our own to our people. We're fortunate at Wind River because we have a little bit of resources and we're not totally dependent upon the Federal Government.

Senator **McCain**. How do you account for things getting better, in addition to your outstanding leadership?

Mr. **Martel**. We have several new tribal enterprises which have been put into place on the reservation in recent years. We're developing a conference center, a restaurant, and a motel. We have a natural hot springs. We're looking at developing the recreation and tourism aspect of our reservation. We're trying to accomplish that even though we don't have the full revenue—the full amount of dollars that we would like to have—but, like I said, we have a trust responsibility to our own people.

Senator **McCain**. Do me a favor, would you? When you get time—and I know that's a very precious commodity with you—would you write me a letter, or have the tribal council write me letter, chronicling some of the successes that you have had? It's rare enough that I would like to get more details on it.

Mr. **Martel**. I would be glad to do it, Senator.

Senator **McCain**. Thank you.

Also how those things came about, if you would. I would very much appreciate it.

Mr. Ortiz, any additional statement or comment that you wanted to make, I would appreciate it if you make it now. Also, as the Chairman said, we will keep the record open and you can include additional comments, if you wish.

Would you like to make one now?

Mr. **Ortiz**. Yes, Mr. Chairman.

We have provided written comment already, but I would like to make one other comment that we'd like you to encourage your colleagues to encourage the Governors of different States for their contacts that these Federal incentives that you are working on right now, S. 1203 and S. 1650, and possibly other solutions or alternatives should be encouraged. I think it can only benefit us all.

Thank you.

Senator McCAIN. Thank you, Mr. Ortiz.

As I said a couple of hours ago, I think there are issues when their time has come. I may be too close to the issues to be able to view them objectively, but we're going to work very hard on it.

I thank all of you for being here. Mr. Korth, thank you. Mr. Keizer, thank you. Mr. Ortiz and Mr. Martel, thank you for being here. We look forward to seeing you again. I hope to come out and visit you in Wyoming. I visit at Window Rock all the time.

Thank you.

This hearing will stand adjourned.

[Whereupon, at 4:44 p.m., the committee was adjourned to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 20 1988

Memorandum

To: Geraldine Gerardi, Acting Deputy Director, Business Taxation, U.S. Department of the Treasury

From: Robert Nelson, Economist, Office of Policy Analysis, U.S. Department of the Interior

Subject: The Impact on Government Net Revenues of Creating Enterprise Zones on Indian Reservations

After some delay, I am finally getting back to the issues raised in the November discussions between Interior and Treasury concerning the letter to Senator John McCain. As you may recall, Senator McCain asked Interior for estimates of the revenue impacts on the government of creating enterprise zones on Indian reservations. I am sending this memo, not only in hopes of finally getting a letter out to Senator McCain, but also because I believe the issue raised is important and deserves further attention. Both the House and Senate held hearings last year on enterprise zone legislation for Indian reservations, so Congressional action is an actual possibility this year. The Treasury Department may well have to examine further the potential merits of such legislation.

Briefly stated, my argument is as follows. Indian reservations are generally located in isolated and remote areas where there are very few current businesses. Hence, tax advantages in enterprise zones are likely to cause very little loss of tax revenue from giving tax breaks to businesses already located in zones. There is also likely to be very little shifting of nearby local businesses into enterprise zones, because there are very few existing businesses in these areas to begin with.

Indian reservations at present also have extremely high unemployment rates. BIA estimates typical reservation unemployment rates of 40 percent to 50 percent, and unemployment reaches 80 percent on some reservations. Hence, new employment attracted to reservations will not result in the displacement of workers on the reservation from one job activity to another. Rather, new employment will represent the creation of net new jobs on the reservation and in the reduction of overall reservation unemployment. Even if an existing worker takes a newly created job, this workers place can then be filled from the ranks of the unemployed.

If enterprise zones succeed in attracting businesses to reservations from more distant areas, there are two ways in which Federal revenues can be positively affected. First, the employment of reservation Indians may remove them from welfare rolls, causing a reduction in Federal welfare costs. Second, the newly employed reservation workers may pay some personal Federal income taxes to the government. According to my calculations, the net revenue gain to the Federal Government is at least several thousand dollars per new job attracted to reservations.

If I may state my understanding of the Treasury criticism, it is as follows. The attraction of new businesses to reservations may result in net additions to employment on the reservation. However, there is unlikely to be a net addition to employment nationwide, because jobs will be lost somewhere else. Any new businesses locating on reservations instead would have located somewhere else. An enterprise zone on a reservation thus does not help with the nation's overall unemployment problem. Rather, in the Treasury view, the enterprise zone merely seeks to displace unemployment from the reservation to some other place.

It is thus also incorrect -- according to the Treasury view -- to count reductions in welfare costs and new personal tax revenues from added workers in Indian enterprise zones as contributions to net Federal revenues. Rather, the enterprise zone merely displaces welfare costs and the collection of Federal revenues from one location to another location.

My response to the Treasury concerns is as follows. Indian reservations have long existed in a condition of severe unemployment. Unlike most areas, severe unemployment on the reservation is not a temporary disequilibrium condition but a permanent state of affairs. By contrast, unemployment somewhere else that is caused by the shifting of businesses to reservations (induced by enterprise zone tax advantages) will generally be temporary. Existing workers elsewhere may be displaced, but they will gradually find their way to new businesses and new employment -- unlike the Indian residents of reservations, many of whom have remained in a state of unemployment for years.

Moreover, the official policy of the Federal Government is that Indians have a permanent right to remain on the reservation, however unpromising the future economic prospects. In any location other than a reservation, one could properly argue that unemployment is a market signal that calls for the movement of workers to other locations and markets. On reservations, this argument is explicitly contrary to government policy.

Hence, when matters have settled out, the new equilibrium will look as follows. On the reservation, more jobs will exist, unemployment will be reduced, and welfare rolls will be reduced. Elsewhere, there may be a displacement from one type of employment to another, but the overall unemployment and welfare levels will remain unaffected in the long run. Hence, in the eventual new equilibrium the welfare cost savings and new tax collections on reservations do in fact represent net revenue additions to the Federal treasury. By long convention, economists have focused on long-run equilibrium states as a necessary simplifying assumption in performing their analyses.

I have done a little research and have reviewed the book, Unemployment, Idle Capacity and the Evaluation of Public Expenditures, by Robert Haveman and John Krutilla (Johns Hopkins University Press, 1968). According to my reading, Haveman and Krutilla support the viewpoint that I have been advocating. They argue that in areas of chronic and severe unemployment the true cost to the nation of newly employed labor is zero. That is to say, there is no national opportunity cost to employing labor resources where it is certain that these resources otherwise would have been unemployed. Any short-term displacement effects elsewhere are gradually cancelled out, as the labor market there returns to a full employment equilibrium. The Haveman and Krutilla view has also been officially adopted by OMB and the Federal Government in the Principles and Standards for evaluating Federal water resource projects (see attached excerpts).

One may ask how real national benefits can be obtained at a zero cost to the nation. Yet, as Haveman and Krutilla write, "to the extent that unemployed labor is hired, society need forego no alternative outputs" (page 67). I am similarly arguing that real Federal revenue gains can be achieved on Indian reservations without any losses of Federal revenues elsewhere. If there is no national opportunity cost to employing reservation labor, as the reasoning of Haveman and Krutilla leads one to conclude, there would also be no loss of tax revenue anywhere else.

A condition of severe and chronically unemployed labor resources -- and thus the potential for gaining revenues and other things of value for the nation at no real cost -- is nowhere found more clearly than on Indian reservations. The revenue impacts of Indian enterprise zones should be evaluated simply by assessing whether the welfare cost savings and new personal income taxes generated by new zone businesses exceed any tax losses due to the tax concessions that were needed to attract these businesses to reservations. This was the approach followed in preparing the revenue impact analyses for the Report of the Task Force on Indian Economic Development and in the updated version developed for Senator McCain.

I hope we can pursue this question further. As I indicated, it is not only a matter of the letter to Senator McCain but also of the government doing a proper analysis of the potential national benefits (or national losses) resulting from enterprise zone legislation for Indian reservations.

Robert H. Nelson

Robert Nelson

Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies

March 10, 1983

Foreword

These Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies have been developed to guide the formulation and evaluation studies of the major Federal water resources development agencies. This document is the product of extensive work by experts from a variety of professions and was developed with the help of hundreds of comments from the public. It contains the best currently available methods for calculating the benefits and costs of water resources development alternatives accurately and consistently, and is intended to ensure proper and consistent planning by the covered Federal agencies. I am confident that these Principles and Guidelines will enhance our ability to identify and recommend to the Congress economically and environmentally sound water project alternatives.

In accordance with Section 103 of the Water Resources Planning Act, as amended (42 U.S.C. 1962a-2), the Water Resources Council voted on September 9, 1982, to repeal the existing Principles, Standards and Procedures (18 CFR, Parts 711, 713, 714 and 716) and to establish these Principles and Guidelines. The President approved the Principles on February 3, 1983. In accordance with Executive Order 11747 (38 FR 30993, November 7, 1973), I hereby approve the new Standards (Chapter I) and Procedures (Chapters II and III).

James G. Watt

James G. Watt
Chairman
U.S. Water Resources Council

Economic and Environmental Principles for Water and Related Land Resources Implementation Studies

These Principles are established pursuant to the Water Resources Planning Act of 1965 (Pub. L. 89-80), as amended (42 U.S.C. 1962a-2 and d-1). These Principles supersede the Principles established in connection with promulgation of principles, standards and procedures at 18 CFR, Parts 711, 713, 714 and 716.

1. Purpose and Scope

These principles are intended to ensure proper and consistent planning by Federal agencies in the formulation and evaluation of water and related land resources implementation studies.

Implementation studies of the following agency activities are covered by these principles:

(a) Corps of Engineers (Civil Works) water resources project plans;

(b) Bureau of Reclamation water resources project plans;

(c) Tennessee Valley Authority water resources project plans;

(d) Soil Conservation Service water resources project plans.

Implementation studies are pre- or postauthorization project formulation or evaluation studies undertaken by Federal agencies.

2. Federal Objective

The Federal objective of water and related land resources project planning is to contribute to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders, and other Federal planning requirements.

(a) Water and related land resources project plans shall be formulated to alleviate problems and take advantage of opportunities in ways that contribute to this objective.

(b) Contributions to national economic development (NED) are increases in the net value of the national output of goods and services, expressed in monetary units. Contributions to NED are the direct net benefits that accrue in the planning area and the rest of the Nation. Contributions to NED include increases in the net value of those goods and services that are marketed, and also of those that may not be marketed.

3. State and Local Concerns

Federal water resources planning is to be responsive to State and local concerns. Accordingly, State and local participation is to be encouraged in all aspects of water resources planning. Federal agencies are to contact Governors or designated State agencies for each affected State before initiating studies, and to provide appropriate opportunities for State participation. It is recognized, however, that water projects which are local, regional, statewide, or even interstate in scope do not necessarily require a major role for the Federal Government; non-Federal, voluntary arrangements between affected jurisdictions may often be adequate. States and localities are free to initiate planning and implementation of water projects.

4. International Concerns

Federal water resources planning is to take into account international implications, including treaty obligations. Timely consultations with the relevant foreign government should be undertaken when a Federal water project is likely to have a significant impact on any land or water resources within its territorial boundaries.

5. Alternative Plans

Various alternative plans are to be formulated in a systematic manner to ensure that all reasonable alternatives are evaluated.

(a) A plan that reasonably maximizes net national economic development benefits, consistent with the Federal objective, is to be formulated. This plan is to be identified as the NED plan.

(b) Other plans which reduce net NED benefits in order to further address other Federal, State, local, and international concerns not fully addressed by the NED plan should also be formulated.

(c) Plans may be formulated which require changes in existing statutes, administrative regulations, and established common law; such required changes are to be identified.

(d) Each alternative plan is to be formulated in consideration of four criteria: completeness, effectiveness, efficiency, and acceptability. Appropriate mitigation of adverse effects is to be an integral part of each alternative plan.

(e) Existing water and related land resources plans, such as State water resources plans, are to be considered as alternative plans if within the scope of the planning effort.

6. Plan Selection

A plan recommending Federal action is to be the alternative plan with the greatest net economic benefit consistent with protecting the Nation's environment (the NED plan), unless the Secretary of a department or head of an independent agency grants an exception to this rule. Exceptions may be made when there are overriding reasons for recommending another plan, based on other Federal, State, local and international concerns.

7. Accounts

Four accounts are established to facilitate evaluation and display of effects of alternative plans. The national economic development account is required. Other information that is required by law or that will have a material bearing on the decisionmaking process should be included in the other accounts, or in some other appropriate format used to organize information on effects.

(a) The national economic development (NED) account displays changes in the economic value of the national output of goods and services.

(b) The environmental quality (EQ) account displays nonmonetary effects on significant natural and cultural resources.

(c) The regional economic development (RED) account registers changes in the distribution of regional economic activity that result from each alternative plan. Evaluations of regional effects are to be carried out using nationally consistent projections of income, employment, output, and population.

(d) The other social effects (OSE) account registers plan effects from perspectives that are relevant to the planning process, but are not reflected in the other three accounts.

8. Discount Rate

Discounting is to be used to convert future monetary values to present values.

9. Period of Analysis

The period of analysis to be be the same for each alternative plan.

10. Risk and Uncertainty

Planners shall identify areas of risk and uncertainty in their analysis and describe them clearly, so that decisions can be made with knowledge of the degree of reliability of the estimated benefits and costs and of the effectiveness of alternative plans.

11. Cost Allocation

For allocating total project financial costs among the purposes served by a plan, separable costs will be assigned to their respective purposes, and all joint costs will be allocated to purposes for which the plan was formulated. (Cost sharing policies for water projects will be addressed separately.)

12. Planning Guidelines

In order to ensure consistency of Federal agency planning necessary for purposes of budget and policy decisions and to aid States and the public in evaluation of project alternatives, the Water Resources Council (WRC), in cooperation with the Cabinet Council on Natural Resources and Environment, shall issue standards and procedures, in the form of guidelines, implementing these Principles. The head of each Federal agency subject to this order will be responsible for consistent application of the guidelines. An agency may propose agency guidelines which differ from the guidelines issued by WRC. Such agency guidelines and suggestions for improvements in the WRC guidelines are to be submitted to WRC for review and approval. The WRC will forward all agency proposed guidelines which represent changes in established policy to the Cabinet Council on Natural Resources and Environment for its consideration.

13. Effective Date

These Principles shall apply to implementation studies completed more than 120 days after issuance of the standards and procedures referenced in Section 12, and concommitant repeal of 18 CFR, Parts 711, 713, 714, and 716.

These economic and environmental Principles are hereby approved.

Ronald Reagan

February 3, 1983

2.10.8 Report and display procedures.

Other direct benefits should be identified by component and added onto the benefits of the benefit-cost analysis. The method used to value the benefits should be presented in the report. Provide a tabular breakdown of all other direct benefits claimed for the project.

Section XI—NED Benefit Evaluation Procedures: Unemployed or Underemployed Labor Resources

2.11.1 Introduction.

The economic effects of the direct use of otherwise unemployed or underemployed labor resources during project construction or installation may, under certain conditions, be included as a national economic development (NED) benefit. Because of the dynamic nature of unemployment situations, the appropriateness of these benefits will be determined in consideration of economic conditions existing at the time the project is submitted for authorization and for appropriations to begin construction. This section provides procedural guidance in the evaluation of NED benefits resulting from increased employment of these labor resources. Use the procedures described in 2.11.4 to calculate these benefits ~~for all~~ structural and nonstructural alternatives considered during the planning process.

2.11.2 Conceptual basis.

(a) The social cost of a project is less than the market contract cost in situations in which otherwise unemployed or underemployed labor resources are used in project construction. The opportunity cost of employing otherwise unemployed workers in project construction or installation is equal to the value of leisure time foregone by such workers. Because society does not give up any alternative production of goods and services and because it would be difficult to measure the value of leisure time foregone, a zero opportunity cost is used in these procedures. The opportunity cost of employing otherwise underemployed workers equals their without-project earnings, which, by virtue of their underemployment, are less than their market cost. The most straightforward way to reflect the effects of employing unemployed or underemployed labor resources would be to reduce by the appropriate amount the project construction costs in the NED account, but this method would cause accounting difficulties in appropriations, cost allocation, and cost sharing. Therefore, these effects are treated as a project benefit in the NED account.

(b) Conceptually, any employment, anywhere in the Nation, of otherwise unemployed or underemployed resources that results from a project represents a valid NED benefit. However, primarily because of identification and measurement problems and because unemployment is regarded as a temporary phenomenon, only those labor resources employed onsite in the construction or installation of a project or a nonstructural measure should be counted. Benefits from use of otherwise unemployed or underemployed labor resources may be recognized as a project benefit if the area has substantial and persistent unemployment at the time the plan is submitted for authorization and for appropriations to begin construction. Substantial and persistent unemployment exists in an area when:

(1) the current rate of unemployment, as determined by appropriate annual statistics for the most recent 12 consecutive months, is 6 percent or more and has averaged at least 6 percent for the qualifying time periods specified in paragraph (2) and

(2) the annual average rate of unemployment has been at least: (i) 50 percent above the national average for three of the preceding four calendar years, or (ii) 75 percent above the national average for two of the preceding three calendar years, or (iii) 100 percent above the national average for one of the preceding two calendar years.

(c) Only the portion of project construction activity located in such an area is eligible for employment benefits as calculated in accord with the procedures specified below. Any benefit claimed should be clearly justifiable both in terms of availability of amounts of unemployed and/or underemployed labor and their skills and occupations.

2.11.3 Planning setting.

(a) *Without-project condition.* The without-project condition is the most likely condition expected to exist in the future in the absence of a project, including known changes in law or public policy. The evaluation of NED benefits associated with the use of otherwise unemployed and underemployed labor resources is linked to the number by which these resources would be reduced over time without a project.

(b) *With-project condition.* The with-project condition is the most likely condition expected to exist in the future with a given project alternative. There is a different with-project condition and thus a different employment benefit for each alternative plan. Currently, the employment benefit cannot be estimated directly on the basis of a comparison of the size of the pools of unemployed and underemployed labor with and without a project. Instead, the benefit procedure implicitly projects the percentage of project labor hires estimated to come from the unemployed labor pool.

2.11.4 Evaluation procedure.

(a) *Step 1.* Calculation of employment benefits is limited to onsite project construction or installation activity in eligible regions as defined in 2.11.2(b). The first step therefore is to determine whether a project is wholly or partially located in an eligible area.

(b) *Step 2.* Estimate the number of skilled and unskilled unemployed construction workers in the labor area. Construction labor pool data are usually available from local offices of State employment security agencies.

(c) *Step 3.* Determine the labor requirements for plan implementation as follows:

(1) *Labor cost.* The manpower requirements of water resource projects differ widely. Construction cost estimate data will provide the percentage of labor cost to total construction contract cost.

(2) *Manpower requirements.* Analyze the plan's construction work force and schedule to determine manpower requirements over the construction period for skilled and unskilled categories of workers. Convert these data to total construction wages in skilled and unskilled categories by year of construction. In addition, estimate the yearly wage bill of other workers needed on the project. Use the occupational tables in Appendix 1 of this section to categorize different types of workers.

(d) *Step 4.* Compare the annual manpower requirements of the project to the size of the unemployed labor pool in eligible regions. If labor availability is significantly larger than labor requirements, proceed to the next step. If not, reduce the percentages in the next step based on one or both of the following: expert interviews; or a careful matchup of requirements and availability for specific types of jobs (e.g., carpenters).

(e) *Step 5. Calculate NED employment benefits*—(1) *Standard method.* The following percentages are derived from *An Evaluation of the Public Works Impact Program* (PWIP).[1] Although the projects studied in the PWIP report are not fully comparable to many typical water projects, the report does provide an empirical basis for relating public works expenditures to employment of unemployed workers. Case 1, below, covers situations in which there is no "local hire" rule; it is taken directly from the PWIP report, as PWIP has no local hire rule. Case 2 covers situations in which there is a local hire rule; the reference data are modified to account for an 80-percent local hire by scaling up the actual local hires (for skilled and unskilled workers) to 80 percent, but retaining the distribution of local hires previously employed to local hires previously unemployed.

(i) *Case 1, NED benefits, no local hire rule.* Multiply the total wages determined by categories of workers (skilled, unskilled, and other) by the following percentages to obtain NED benefits by year of construction:

Skilled—30

Unskilled—47

Other—35

(ii) *Case 2, NED benefits, local hire rule.* Apply the following percentages in Case 2 situations:

Skilled—43

Unskilled—58

Other—35

Because the 80-percent local hire rule is a goal, not a requirement, support these percentages by data that indicate the local hire goal is likely to be met. If this is unlikely, reduce Case 2 percentages to numbers between the standard Case 1 and Case 2 percentages.

(iii) *Annual NED benefits.* Convert the NED benefits by year of construction to an annual equivalent basis using the current discount rate.

(2) *Alternative methods.* The percentages of unemployment hires may be changed from those used in the standard method if the change can be supported by an empirical study that shows different percentages of unemployed and underemployed workers on a similar project, or on a segment of the same project, for labor market conditions similar to those of the proposed project. In using this method, it may be necessary to vary the categorization of construction workers used in the standard method. The opinions of experts such as local State employment security agencies, local construction firms, associations of contractors, and labor unions may not be substituted for empirical data. Studies used to document alternative percentages for specific types or locations of projects should be cited if not included in the project report.

(3) The percentages are used in the standard method to measure wages paid directly to previously unemployed workers. Previously employed workers may vacate jobs that then become available to unemployed workers, but there are no empirical data to support a quantification of such indirect ef-

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[1] Economic Development Administration, U.S. Department of Commerce. *An Evaluation of the Public Works Impact Program (PWIP).* Springfield, VA. National Technical Information Service (PB–263 098), January 1975.

fects, and no estimates of these effects should be included in the NED account.

2.11.5 Report and display procedures.

Include the employment benefits of each alternative plan as a line item in the display of NED benefits in the system of accounts for any project or portion of a project located in an area that contains unemployed or underemployed resources, as defined in 2.11.2(b).

Appendix 1 to Section XI—Occupational Tables

Blue Collar Unskilled Occupations

- Bricklayer Apprentice
- Carpenter Apprentice
  - Apprentice Carpenter
  - Carpenter Helper
- Chainman
- Deck Hand
- Electricial Apprentice
  - Apprentice Electrician
  - Apprentice Wireman
  - Electrician Trainer
- Iron Worker Apprentice
- Laborer
  - Asphalt Distributor
  - Assistant Carpenter
  - Bottom Laborer
  - Brick Tender
  - Carpenter Aid
  - Carpenter Helper
  - Chainsawman
  - Common Laborer
  - Concrete Braker
  - Concrete Laborer
  - Concrete Saw
  - Construction Laborer
  - Ditch Laborer
  - Drill Helper
  - Flag Person
  - Hod Carrier
  - Kettleman
  - Laborer
  - Laborer Apprentice 3rd
  - Laborer Group I
  - Laborer Group V
  - Labor Shop Man
  - Laborer Topman
  - Laborer Utilitymen
  - Landscape Laborer
  - Mason Helper
  - Mason Laborer
  - Mason Tender
  - Mortarman
  - Mortarmier
  - Pipe Layer
  - Pipe Helper
  - Pipe Fitter
  - Plasterer Tender
  - Powderman
  - Pusher
  - Rakeman
  - Reboundman
  - Road Laborer
  - Roof Helper
  - Sand Blaster
  - Set-up-man
  - Sprinkler Apprentice
  - Stake Setter
  - Tender
  - Termite Operator
  - Tile Setter Operator
  - Vibrator Operator
  - Water Truckman
- Lumberman and Nurseryman
  - Tree Thinner
  - Treeman
  - Treeplanter
- Operating Engineer Apprentice
  - B. M. Apprentice
  - EO Group III
  - EO Group 222
- Plumber Apprentice
  - Plumber Apprentice
  - Plumber Helper
- Painter's Helper
- Sheet Metal Apprentice
- Vibrator Operator
- Watchman
  - Night Watchman

Blue Collar Skilled Occupations

- Blaster
- Boilermaker
- Boilermaker Foreman
- Bricklayer
  - Block Layer
  - Truckpointer
  - Brick Mechanic
- Bricklayer Foreman
- Carpenter
  - Form Setter
  - Journeyman Carpenter
  - Soft Floor Layer
- Carpenter Foreman
- Carpenter Superintendent
- Cement Mason
  - Finisher
  - Journeyman Finisher
- Cement Mason Foreman
- Diver
- Driller
  - Drill Rig Operator
- Electrician
  - Journeyman Electrician
  - Mechanical Electrician
  - Wireman
  - Journeyman Wireman
- Electrical Foreman
- General Foreman
  - General Labor Foreman
  - Project Foreman
- Glazier
- Iron Worker
  - Reinforcing Ironworker
  - Structural Ironworker
  - Steel Worker
  - Steel Erector
  - Steel Setter
  - Reinforcing Steel Worker
- Iron Worker Foreman
  - Labor Foreman
  - Construction Foreman
  - Foreman
  - Job Foreman
  - Lead Foreman

- Lather
- Lather Forfman
- Master Mechanic
- Mechanic
    - Mechanic Welder
    - Repairman
    - Repairman Leadman
- Oiler
    - Oiler Equipment Operator
    - Oiler Operator Group II
    - Oiler Track Type
- Operating Engineer
    - Asphalt Distributor Operator
    - Asphalt Heaterman
    - Backhoe Operator
    - Blade Operator
    - Bobcat Operator
    - Bulldozer Operator
    - Case Operator
    - Class A Operator
    - Class C Operator
    - Crane Operator
    - Digger Operator
    - Distributing Operator
    - Dragline Operator
    - Equipment Operator
    - Equipment Operator Group III
    - Front End Lift Fork Operator
    - Heavy Equipment Operator
    - Hi-Lift Operator
    - Lift Fork Operator
    - Light Equipment Operator
    - Loader Operator
    - Maintenance Loadman
    - Motor Grader Operator
    - Operator Group III
    - Pan Operator
    - Park Equipment Operator
    - Power Drive Moister Operator
    - Power Equipment Operator
    - Pneumatic Tire Roller Operator
    - Pneumatic Tractor Operator
    - Roller Operator
    - Scraper Operator
    - Shovel Operator
    - Tractor Operator
        - Traxeavator Operator
        - Trenching Machine Operator
        - Truck Loader Operator
- Operating Engineer Foreman
    - Leader Operator
- Painter
    - Brush Painter
    - Roller Painter
    - Spray Painter
- Painter Foreman
- Pile Driver
- Pipe Fitter
    - Sp. Box Man
- Pipe Fitter Foreman
    - Sprinkler Foreman
- Plasterer
- Plasterer Foreman
- Plumber
    - Pipe Layer
- Plumber Foreman
    - Plumber General Foreman
    - Plumber Superintendent
- Rigger Foreman
- Roofer
- Sheet Metal Worker
    - Journeyman Sheet Metal
    - Sheet Metal Mechanic
    - Sheet Metal Operator
- Sheet Metal Foreman
- Steam Fitter
- Tile Setter
- Truck Driver
    - Worker
    - Axle Truck Driver
    - 4 Axle Truck Driver
    - Dump Truck Driver
    - Road Truck Driver
    - Tandem Truck Driver
    - Truck Driver II
    - Truck Driver Highway
- Waterproof Foreman

Section XII—NED Cost Evaluation Procedures

2.12.1 Introduction.

This section provides procedures for the evaluation of NED costs of structural and nonstructural elements of water resource plans and projects.

2.12.2 Conceptual basis.

(a) Project measures, whether structural or nonstructural, require the use of various resources. NED costs are the opportunity costs of resource use. In evaluating NED costs, resource use must be broadly defined so as to fully recognize scarcity as a component of value. This requires consideration of the private and public uses that producers and consumers are currently making of available resources or are expected to make of them in the future.

(b) The opportunity costs of resource use are usually reflected in the marketplace. When market prices adequately reflect total resource values, they are used to determine NED costs. When market prices do not reflect total resource values, surrogate values are used appropriately to adjust or replace market prices.

(c) Total NED cost is the market value of a resource plus other values not reflected in the market price of the resource; it therefore accounts for all private sector and public sector uses. Market price is used to reflect the private sector use of resources required for or displaced by a project, and surrogate value is used to reflect the public sector use.

(1) The market price approach relies on the interaction of supply and demand. Price is determined through transactions on the margin between knowledgeable and willing buyers and sellers, neither of whom are able to influence price by their individual decisions. Distortions in market price occur if one

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UNEMPLOYMENT, IDLE CAPACITY, AND THE EVALUATION OF PUBLIC EXPENDITURES:

NATIONAL AND REGIONAL ANALYSES

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V

UNEMPLOYMENT, EXCESS CAPACITY, AND BENEFIT-COST INVESTMENT CRITERIA

THE PRIMARY PURPOSE of this study has been to examine the practical significance of the assumption of full employment which is implicit in nearly all benefit-cost analysis practiced until the present. To what extent is this assumption inimical to a correct evaluation of public investment projects in periods of less than full employment? As we have noted, all analysts agree in principle that adjustment of factor market prices is desirable in periods of depression with severe, widespread, and prolonged unemployment. To date, however, there has been no analysis of the extent of the adjustments required for such conditions. There are two additional forms of unemployment problems: (1) nonfrictional unemployment which persists nationally in spite of high and rising income and employment; and (2) high, geographically isolated, unemployment in a growing national economy. The conditions of the economy during the 1957–64 years illustrate the first of these two problems; Appalachia illustrates the second form.

Although this study was undertaken primarily to investigate the nature of cost adjustments for public investments during conditions of less than full employment, the process of examining the problem in detail uncovered a great deal about the anatomy of these investments. In fact, evidence on the composition of industrial, occupational, and regional impacts of these investments for some purposes may be as significant as the results related to its primary purpose.

Public investments in water resource development projects range from those in which there is no construction activity required, such as dredging, to those which involve the installation of huge capital facilities, such as large dams, reservoirs, and multiple-purpose appurtenances. There is substantial variation among these types of projects in the ratio of labor costs to total project costs, in the ratio of on-site labor cost to total labor cost, and in the distribution of the material, equipment, and supply demands imposed on the supporting industries. Heretofore, these differences have not been appreciated nor their relevance for policy perceived.

There are also significant differences in the pattern of occupational demands for water resource development projects and the occupational structure of the nation as a whole. For example, the total expenditure ditions of less than full employment will be apparent. Second, we describe the procedure used to estimate the extent to which input requirements are satisfied by factors which have no alternative employments. At that point, we argue the need for postulating a set of reasonable market-response relationships describing the functioning of the labor and goods markets in order to estimate social costs. Third, a set of expected response functions relating the degree of required cost adjustment to the level of unemployment is explained. These relationships generate a set of factors to convert market costs into opportunity costs for each type of factor input. Finally, these shadow factors are applied to the project inputs developed in Chapters II and III and the reduction in money costs required to approximate opportunity costs for each of the project types is estimated on both a national and a regional basis for the year 1960.

THE MEASUREMENT OF OPPORTUNITY COSTS

Considered most simply, the opportunity cost of any demand imposed on an economy is the value to society of what it foregoes in satisfying the demand. Assume, for example, that an additional ton of steel production is required of the economy. The social cost of this requirement is represented by the alternative output which the resources devoted to steel production (and to the production of the inputs demanded by the steel industry) would have produced were they not used in producing the ton of steel.

Under certain conditions, the value of this alternative output is easily measured. In a competitive and fully employed market economy with long-run equilibrium, the price of labor—the wage rate—will equate the minimum monetary inducement necessary to bring forth the marginal unit of labor with its marginal value product. Likewise, the equilibrium price of capital will equate the minimum inducement necessary to bring forth the next unit of capital with the value of the output which the marginal unit of capital can produce—the marginal value product of capital.[2] This equilibrium price of capital is further defined as the minimum gross return which is just sufficient to cover the initial investment outlay and meet the interest charges. When P_c is the unit price of capital,

$$P_c = c\,(r) + c\,(d) = c\,(r + d)$$

where c is the initial investment cost, r is the rate of return, and d is the rate of depreciation.[3] Thus, in a fully employed economy with competitive markets, the social cost of diverted marginal units of labor and capital is measured by their market prices. Assuming no tax or other distortions, the value of the alternative product equals the sum of the payments to the diverted factors.

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[2] The input of labor is defined as the number of man-hours of service by the typical worker. The input of capital is defined as the service of a unit of the existing real plant and equipment with which labor works in producing society's output.

[3] This definition of the cost of capital is fairly standard. See W. E. G. Salter, *Productivity and Technical Change* (Cambridge, England: Cambridge University Press, 1960), pp. 18–20; Dale W. Jorgenson, "Capital Theory and Investment

If we now move from the case of full employment to an economy with unutilized resources, the market price of diverted resources no longer equals opportunity cost.[4] The market solution fails to provide an accurate estimation of the social sacrifice required by factor diversion. To the extent that unemployed labor is hired, society need forego no alternative outputs.[5] Similarly, with idle capital stock the social cost of capital employed in the production of marginal units of output is less than the minimum return necessary to bring forth an additional unit of capital. If the required capital were put to no alternative use, the only cost incurred by society would be the depreciation expense representing capital consumption.[6] This foregone opportunity is measured by $c(d)$ in the above equation.[7] The society, in effect, sacrifices by foregoing the ability to produce in future periods, since the ability would have remained undiminished were the capital left idle.

This brief statement suggests the task involved in estimating the opportunity cost of resource use when unemployment and excess capacity cause money costs to diverge from real costs. First, we must identify the required factors of production. These consist of both the direct factor requirements and the derived demands or second and further rounds of demands. Second, we must numerically define unemployed factors—labor or capital—as a deviation from a target (full employment) level of unemployment by occupation or capacity utilization by industry. Third, we must make reasonable estimates of the alternative use of the required units of labor and capital—are these factor units drawn from the pool of the unemployed or are they drawn from alternative employments? Finally, we must assign to each unit of each factor the value of the social loss incurred by its diversion.

Behavior," *American Economic Review, Papers and Proceedings*, Vol. 53 (May 1963), pp. 247–59; and Bert G. Hickman, *Investment Demand and U.S. Economic Growth* (Washington: Brookings Institution, 1965), pp. 29 and 60.

[4] Implicit in this shift from the fully employed economy to the economy with less than full employment is the assumption of price inflexibility. Were prices completely flexible, the case with less than full employment would be but a transitory phenomenon. For convenience, we assume that the market price of the employed factors is equal to the value of their marginal products even though some of the factors are less than fully employed.

[5] See footnote 1, Chapter IV.

[6] Society has already foregone the rate of return on the capital by permitting it to lie idle.

[7] Implicit is the assumption that depreciation results only from wear and tear on the physical capital. Because of obsolescence, charging the entire depreciation cost to the social cost of using the otherwise idle capital may result in some overestimation of social opportunity cost.

SECTORAL DEMANDS, THE PATTERN OF IDLE RESOURCES, AND THE SOCIAL COST OF PUBLIC INVESTMENT

IV

A PROCEDURE FOR ESTIMATING the social cost of public investments when social values diverge from their market counterparts in a less than fully employed economy is presented in this chapter. As is well known, the cost to society of employing additional resources is significantly overstated by factor market prices in such a situation. Indeed, those resources which have no alternative employments cost the society little or nothing if brought into use, even though they are purchased at the market price.[1]

Evaluating the social costs of a public project requires the detailed disaggregation of the input demands generated by the expenditure followed by comparison of these demands with the pattern and degree of unused productive capacity existing in the economy at the time of project construction. Without this detail, the analyst cannot judge the extent to which demanded inputs are supplied from factor stocks that have no simultaneous alternative use. In Chapters II and III, such detailed sectoral demand analyses were presented. Those chapters showed the results when the input demands of twelve types of water resource projects were disaggregated and analyzed in 82-industry and 156-occupation detail. In this chapter, the pattern of unused productive capacity during 1960, roughly representing conditions prevailing in the 1957–64 period, is compared with these detailed input demands to estimate the social cost of project construction.

We proceed as follows: First, the meaning of the opportunity cost of resource use is investigated for the primary factors—labor and capital—under conditions of both full utilization and complete idleness. From this, the kind of cost adjustment required for factor services under con-

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[1] To claim that the use of unemployed resources is costless is an overstatement. When idle labor is employed the leisure of the unemployed is given up. When idle capital is employed (and partially consumed) the society is foregoing the possibility of an equivalent amount of future capital consumption. Our position in this study rests on the assumption that decreases in leisure of the unemployed come at no disutility within the relevant range. A specific allowance for the value of depreciated capital will be made in the study. For one of the earliest statements of this position, see J. M. Clark, *The Economics of Overhead Costs* (Chicago: University of Chicago Press, 1923), p. 354. Clark makes the point that "under special conditions a public expenditure may be virtually costless to the community, for example, public works used as a means of preventing unemployment. But depreciation is always a cost and should be reckoned with . . . .

Don Wharton

TAX INCENTIVES FOR BUSINESS DEVELOPMENT ON INDIAN RESERVATIONS: PROPOSED REPORT

PROJECT OBJECTIVES

The output of this research project is to be a discussion paper concerning tax incentives intended to promote business development on Indian Reservations. The paper will include an initial discussion of the current lack of business activity and the policy goals (e.g. employment, training) of the sponsoring parties. The paper will present an overview of related, potential remedies, and will make arguments for the efficiency of and the need for tax incentives as part of these remedies.

The major part of the study will include description of alternative tax proposals and a discussion of their relative merits and costs. Desirable tax proposals will be designed to have a minimal negative federal revenue impact, and the presentation will offer simple statistical analysis to emphasize the proposals' (near) revenue neutrality.

DEADLINES

An brief written progress report will be made to Native American Rights Fund (NARF) by June 30, 1989. A preliminary draft of the paper will go to NARF by July 31, 1989. This draft shall be in a form suitable for circulation among project sponsors. Sponsor comments will be solicited throughout the month of August 1989, and the report will be reworked to its final form in the month of September.

OBJECTIVES OF THE PROPOSED LEGISLATION

Primary

- Indian employment
- Local business development, especially with indigenous management/ownership
- Develop Indian labor skills
- Attract necessary skilled labor

Secondary

- Capital accumulation
- Reduce or compensate for other constraints on businesses
- Exploit local resources and traditional cottage industries

Note -- There are a lot of things that this legislation clearly cannot hope to accomplish, including:

(1) Enhancing the weak business preconditions that exist on some Reservations (e.g. poor regulatory environment, lack of infrastructure).

(2) A quick solution to the lack of employable skills among reservation inhabitants.

POTENTIAL PITFALLS

- Resistance of regions from which new businesses might relocate.

- Work disincentives of existing public assistance programs.

  -- see following page

- Granting incentives to business that would locate on a reservation anyway (or is already located there)

  Obverse: unfair competition by subsidized newcomers against established firms

- Revenue cost

- Perception of give-away to businesses with hopes of trickle-down, rather than direct help to Indians.

- Varied circumstances of different reservations (esp. near metro. areas).

- Risk of abuse (requires careful definitions of eligibility and of apportionment of income).

- Many incentive programs go unused for lack of publicly available information or administrative barriers (i.e. red-tape and government scrutiny) to participation.

4

SOME INITIAL SUGGESTED DIRECTIONS FOR LEGISLATION

I. EMPLOYMENT POLICIES

The Context of Public Assistance

The common work disincentives of public assistance are well-known, but are exacerbated for reservation Indians because (1) public assistance coverage is wider, due to BIA General Assistance, and (2) (verify) HUD housing is relatively more common.

The disincentive effect is best illustrated through a couple of representative examples:

(a) A family of 2 unemployed adults and 2 children receives approximately $3,100 in GA and $2,950 in food stamps, and pays $900/year for HUD subsidized housing. Suppose one parent obtains a job paying $8.00/hr. At this wage rate, after-tax income is $13,700, but the family forfeits their $6,000 in benefits. In addition, their HUD rent jumps to $3,800. So despite having obtained a relatively high-paying job, the family's net income rises by only $3,900 (equivalent to a wage rate of only $1.95/hour). This implies an average tax rate of 75%.

(b) In the same scenario as in (a), but for a single-parent family with 2 children, the initial benefits are higher, and so the net increase in income is only $3,400, implying an average tax rate of 79%.

(c) A single adult who begins a job at the minimum wage gives up $2,400 in benefits for $5,800 in take-home pay. That worker's implicit wage is thus $1.70/hour. However, if the person has HUD housing, the rent jumps from $450/year to almost $2,000; in this instance, the workers net increase in income is only $1,900, or a net wage of $0.95/hour.

Since most potential employment creation on reservations will be of relatively low-skilled jobs, they will offer little reward compared to the option of not working and living on public assistance (and perhaps doing unreported, irregular jobs to supplement benefits). No tax incentive program is likely to overcome this barrier, and discussion of policy changes in this area must necessarily precede other policy debate.

A. On-the-Job Training Program

Description:

The current JTPA budget for Indian reservations is on the order of $100 million ($2400/enrollee/per year). Broadly defined employer-run job training for new employees, for up to a several month period, would be paid out of a reserve of JTPA funds.

Example:

Company receives a credit (or direct payment) for 50% of first 3 months wages, up to a wage cap of $12/hour for 40 hours/week, with some provision to prevent churning of employees. Employees already employed might be eligible for a one-time training credit, if that training preceded a job promotion. At the minimum wage of $3.35/hour, this would have a revenue cost about $450 for the 3 months. At $12/hour, the cost would be about $1620 -- still much less than JTPA costs. An alternative would have the credit tied to the training required for the job, but this is much more difficult to administer.

Advantages:

Revenue-neutral by design. To the extent that workers were previously unemployed, actually revenue enhancing. Gives workers training that is directly applicable. Might also be applied to defray cost of training higher-skilled workers. Cost per trainee potentially much lower than JTPA.

Disadvantages:

(i) Risk of abuse by firms that do not actually offer any training and just treat the program as a wage subsidy.

(ii) This constitutes only a small part of necessary policy.

Suggestions:

(i) Formulate very specific definitions of training to avoid abuse.

(ii) Employing firm would likely commit to some sort of employment guarantee to avoid their churning employees to get the subsidy.

B. Job Expansion Tax Credit

Description: Employer receives an income tax credit for each new job created on a reservation. Might be refundable.

Example:

Credit would likely be an amount per worker-hour, either

(1) a percentage of the wage (e.g. 50%) up to some wage cap (e.g. $12,000)

(2) a fixed amount (e.g. $2.50)

or (3) a step function (e.g. 40% of first $12,000 salary, 25% of next $12,000, 15% of next $12,000).

Advantages:

The revenue loss is used only for marginal (i.e. newly-created jobs). Moreover, since the wage bill is deducted anyway, the actual revenue loss is less than the credit (i.e. it equals the credit x (1 - business tax rate)). Given the high level of public assistance, it may be argued that the decline in welfare costs approximately offsets the revenue loss. (N.B. The BIA Task Force arguments tries to make this case.)

In addition, it offers tax breaks that enable firms both to hire reservation labor cheaply, and to attract skilled off-reservation labor.

Disadvantages:

(i) risk of existing firms (either on or off reservations) dissolving and reforming to qualify as new employers.

(ii) gives new businesses a competitive advantage against pre-existing ones -- to produce more efficiently and to hire employed workers away from their current jobs.

(iii) Taking a job causes a large loss of public assistance benefits. This subsidy can only partly counteract this enormous disincentive for Native Americans to take jobs, allowing employers to offer wages that enable workers to come out ahead. Unclear whether this can work without restructuring the welfare incentives.

Suggestions:

(i) try to formulate legislation in such a way as to preclude potential evasion.

(ii) offer some advantages that cover existing businesses as well.

(iii) in order to offset the inequality for established versus new firms, it may be better to make the credit large, but not refundable (i.e. a cash refund to firms with no net income tax obligation).

C. Employment Tax Credit Vouchers

Description: Unemployed workers carry a voucher that is like a bounty -- e.g. an business income tax credit of $5,000 (or equal to average total welfare benefits received) -- that the employing firm receives for full years of net new employment. It would likely decline each year, until it disappeared after about three years.

Advantages:

The revenue loss is well targeted to marginal employment of the most needy. There is a tight link between expenditure savings (on welfare payments) and revenue losses.

Disadvantages:

(i) Likely stigma attached to those who carry the vouchers, if they are limited to certain subgroups. This will certainly be an off-reservation problem, although possibly not a problem if all reservation residents are eligible.

(ii) Does nothing to attract skilled off-reservation labor.

(iii) Risk of existing firms (either on or off reservations) dissolving and reforming to qualify as new employers.

(iv) Allows new businesses to produce more efficiently than pre-existing ones.

Suggestions:

(i) other policies needed to attract skilled labor ;

(ii) try to formulate legislation in such a way as to preclude potential evasion.

(iii) offer some advantages that cover existing businesses as well.

II. CAPITAL POLICIES

My tentative assessment is that tax incentives for capital may not be the best policy, for 3 reasons:

(i) There are sufficient sources of capital, some of it subsidized, although the capital tends to be allocated inefficiently on reservations. Examples include BIA Guaranteed and Direct Loan Programs, SBA loans and minority loans, Department of Commerce Loan Guarantees for Business Development.

(ii) It is not clear that getting capital on the reservation is per se a goal. For the same amount of funding, it may be useful just to finance employment.

(iii) There is no evident revenue savings to offset the revenue loss from this type of incentive. Thus it is more difficult to argue that the policies will be revenue neutral.

Accordingly, it is probably neither efficient nor convincing to offer additional give-aways. Instead, it probably makes sense to re-allocate BIA or other economic development monies to this purpose.

BIA Business Enterprise Development budget ($20.9 million, 1985)

of which: Indian Business Development Grant Program ($9.8 million, 1985) -- this is better as equity participation than grants.

Other sources?

A. Venture Capital Fund

* e.g. Tribal Assets Management in Maine
* International Finance Corporation (IFC) as a possible model

B. Investment Tax Credit (refundable or not)

C. Accelerated Depreciation or Capital Expensing

D. Capital Gains Reduction

Disadvantages:

This incentive is a relatively poor choice for 3 reasons:

(i) It gives most of its inducement to projects that give quick capital appreciation, which can be resold relatively quickly. This goes against the goal of inducing investment in stable, long-term projects.

(ii) It is poorly focused, giving its benefits to all existing investment as well as new investment.

(iii) It offers nothing up-front. The PDV of the eventual exemption is thus small.

III. INFRASTRUCTURE POLICIES ??

IV. PUBLICITY FUNDS ??

Sources of funding?

PROPOSED BUDGET

100 hours by Eric Rice @ $50	$5,000
150 hours by Research Assistant @ $10	$1,500
Office expenses: phone, printing, typing, mail	$1,200
Travel -- 2x to DC (time + expenses) @$900	$1,800
Research materials	$ 300
Total	$10,000

How much are average public assistance benefits?

Food distribution program (1984) -- covering 154,000 @ $68 million ($440/person)

Food stamps (1985) -- covering 107,000 reservation households (about 2/3) @ $149 million (1390/household)

WIC food (1985) -- $22 million

JTPA (1984) -- $62 million

GA -- ??

AFDC -- ??

(HUD -- not likely to be diminished at all)

NOTES:

Resources I need:

Select Committee report, Federal Programs of Assistance to American Indians

Census Reports on Indians (?)

BIA quarterly labor (?) survey reports

Kemp's Enterprise Zone proposals and supporting literature
-- ask Lewis

Dept. Interior, Task Force Report, 1986

What level of economic analysis desired? Presumably like Task Force Appendix -- assumptions relegated to Appendix?

Does this include natural resources investment? Or not at all? or incidentally?

What is the prospect for "Puerto Ricanizing" Indian reservations? Is this desirable?

Need to avoid transfer of income -- without actual production -- from non-reservations. An important reason for employment (and investment) subsidy rather than low Y-tax rates.

What % of Reservation housing is HUD?

Are goals reservation-specific, or for all Indians?

How to take into account and quantify job and income loss from other locations (especially nearby)? How to justify it?

Use illustrative e.g.s -- like revenue impact for a typical family -- and then aggregate up.

Learn about success of state incentives -- who knows the literature on this??

STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 1650, A BILL CITED AS THE "INDIAN EMPLOYMENT OPPORTUNITY ACT OF 1989"; S. 1203, A BILL CITED AS THE "INDIAN ECONOMIC DEVELOPMENT ACT OF 1989", AND THE SUPREME COURT DECISION, COTTON PETROLEUM V. NEW MEXICO.

May 1, 1990

Mr. Chairman and members of the Committee, I am pleased to discuss S. 1203, the "Indian Economic Development Act of 1989", S. 1650, the "Indian Employment Opportunity Act of 1989", and the Supreme Court's decision reached in Cotton Petroleum v. New Mexico, 109 S. Ct. 1698, (1989).

While we applaud efforts to stimulate economic development opportunities on Indian reservations, we cannot support enactment of S. 1203 and S. 1650 at this time. Both bills would make substantive and technical changes to the Internal Revenue Code of 1986. At this time there is not sufficient analysis available to judge the overall impact on Government revenues. We believe further study of this issue is needed which we hope to see accomplished.

For purposes of this hearing, however, I would like to share some of the tribal comments we received at the two regional economic summits which we organized earlier this year in Phoenix, Arizona, and Fort Lauderdale, Florida.

S. 1203

S. 1203 provides reservation based businesses with four types of tax incentives. They are:

(1) investment tax credits amounting to a 5% credit for personal property, a 10% credit for reservation infrastructure investment and 20% credit for new construction property;

(2) non-recognition of gain on the sale of reservation property where reinvestment is made on an Indian reservation within 1 year;

(3) classification of certain members of federally recognized tribes who are economically disadvantaged as a targeted group for purposes of the Targeted Jobs Tax Credit (amounting to 40% credit of the first $6,000 in wages paid in the first year of employment); and

(4) exempting business income earned on an Indian reservation from the Federal corporate income tax similar to the current exemption for businesses operating in U.S. possessions (e.g. Puerto Rico).

A recent study by the Congressional Research Service concluded that S. 1203 would offer large tax savings and thus a powerful incentive for businesses to locate on Indian reservations. Many reservations face significant geographic, transportation, and other economic disadvantages, which make it difficult for them to attract businesses. Federal assistance can help to overcome these disadvantages and to bring economic development to reservations.

I should note that the tribal participants at both regional summits expressed unanimous support for S. 1203. These summits are being held as part of my efforts to consult with tribes concerning the best ways to promote economic development on reservations. Their decision was based partly on the fact that the bill did not interfere with a tribe's right to chart its own course and set its own pace for reservation based economic development by mandating certain tribal actions in return for federal assistance.

The participants also observed that even if S. 1203 were enacted, these incentives would be of little value unless a tribe was willing to conduct its own internal review to determine actions that it could take or incentives it could offer to further enhance their reservation as a place for the private sector to do business.

The participants had two additional concerns. First, they expressed caution that enactment of S. 1203 or S. 1650 should not be offset by a reduction in other forms of federal assistance to tribes. Second, many participants felt that the Congress should review the restrictions it placed on a tribe's ability to issue tax-exempt bonds.

S. 1650

S. 1650 proposes an ambitious effort of reducing the unemployment rate on Indian reservations by 22 percent. The proposal is to give employers, located on Indian reservations, a tax credit for ten years based on wages paid per employee. An employer would receive a 60 percent credit of the first $8,000 and up to $33,000 in wages paid an employee. The credit is applied toward the qualified employment expenses incurred by an employer for a tax year. The credit is reduced to 20 percent for wages above $8,000 and up to $33,000. No credit is allowed for wages over $33,000. The tax credit is designed to compensate all employers regardless of the type of employment they provide.

A second feature in the bill requires that an Indian tribe desiring to participate in the tax credit program enter into an agreement with the Secretary of the Treasury guaranteeing that for ten years during which an employer is taking advantage of the tax credit program, the tribal government will not impose or otherwise modify existing tax laws or regulations to lessen the tax benefits resulting from the wage-based credit.

The tribal participants at the regional summits generally favored enactment of S. 1650. However, some thought that the ten year cap on tribal taxes was an infringement upon their inherent powers of taxation. They viewed the ten year agreement as a disincentive and doubted whether any tribe would enter such an agreement in order to obtain a benefit for employers. Others proposed a link up between S. 1203 and S. 1650 by replacing the Targeted Jobs Tax Credit in S. 1203 with the wage-based credit in S. 1650.

From these summits, I gained a greater appreciation for the comprehensive and multifaceted nature of tribal community development. The tribal participants have defined a process of successful economic development as encompassing a wide range of activities including the promotion of profit-making enterprises, the enhancement of tribal physical and governmental infrastructures, the delivery of community services, and the tribal management of land and natural resources.

As you know, Secretary Lujan and I are committed to the policy of Indian self-determination. Indeed, Secretary Lujan takes very seriously his trust responsibility, and has informed the entire Department that we would consider the trust responsibility in the conduct of all of the various program operations. I share the Secretary's commitment. As a result, I have asked for a review of the Indian Finance Act programs and will be seeking in the near future a review of other programs to determine their strengths and weaknesses.

I now turn to the 1989 Supreme Court decision in Cotton Petroleum v. The State of New Mexico.

As you are aware, the majority of the Court found that there was no evidence to support a finding of adverse impact on the economy on the Jicarilla Apache Reservation when the State of New Mexico as well as the tribe taxed the production of Cotton Petroleum, a non-Indian oil and gas producer operating on the reservation. Although, limited to the factual situation in Cotton, some tribes fear that this decision will be used by states to impose further taxes on reservation lands. The practical result could be a flight by business from "double taxation" on the reservations.

The Jicarilla Apache Tribe was not a party to the litigation and this in part may explain why the court found no evidence of "adverse effect on the tribe's ability to attract oil and gas lessees." (109 S.Ct. 1698, at 1715). Had the tribe been a party, sufficient evidence probably might have been introduced at the trial level to satisfy the court.

We are aware that the states and tribes have been discussing possible legislation addressing this decision. One of the proposals would prohibit state taxation of non-Indian mining activity on Indian lands, but provide for a federal payment in lieu of taxes to the states to compensate for their revenue loss. Another proposal would leave the decision intact, but would allow a company paying both taxes to take a credit on its federal income taxes in the amount of the tribal tax. We will defer comment on these legislative proposals until they have been introduced. Any legislative proposal, however, should consider its impact upon the federal budget.

We believe the best course of action would be to recognize that this decision is limited to the particular facts, or in this case, the lack of particular facts presented in Cotton. Although the tribe filed an amicus curiae brief with both the New Mexico and United States Supreme Court, counsel for Cotton Petroleum did not present evidence for the record that showed tribal injury from a state tax. While the Supreme Court may very well rule in favor of the tribe and its lessee when presented with substantial evidence of tribal economic injury resulting from a state tax, the case is still a damaging precedent. Therefore, we would be willing to sit down with this committee and examine legislative options once they have been introduced.

In conclusion, I want to emphasize the commitment of both Secretary Lujan and myself to taking steps to promote economic development on Indian reservations. I will be happy to work with the Congress toward reaching this goal.

I will be happy to answer any questions the Committee may have.

Indian Affairs - S1203, S1650 and Dual Taxation
Tribal Issues Committee - RMOGA

Written Testimony on Indian Affairs, April 1990

Re: U S Senate Select Committee on Indian Affairs Hearing
1 May 1990, Russell Senate Office Bldg Rm 485 at 2:00pm

By Fred Payne, Chairman - Tribal Affairs and Surveillance,
General Tax Committee, Rocky Mountain Oil and Gas
Association (RMOGA)

The Rocky Mountain Oil and Gas Association is a voluntary, non-profit association with regional headquarters in Denver, Colorado and six divisions representing eight states. Founded in 1920 it represents all facets of the oil and gas industry. Most producers are members; approximately 80% of oil and gas production from Indian lands is by RMOGA members.

United States Senate Bills S1203 and S1650 represent an appropriate attempt to deal with some of the economic issues and problems of Indian affairs. Earned-tax-credits legislation has a history of successfully providing the incentives necessary to produce desired results and there is little doubt that the passage of these bills will offer help for the economic plight of Native Americans and will work to improve conditions on most reservations. I would hope that these bills are a part of an overall plan to address the conditions and issues that have precipitated the need for the incentives that are to be created by these bills.

Government actions regarding Indian affairs have generally been a process of reacting to problems as they arise. Long term plans and consistency of policy have been notably absent. The actions to meet needs and demands have usually required both time and money and few in authority have been willing to appropriate adequate funds and fewer still have had the patience to plan and implement solutions. Most significant is the fact that the issues and circumstances that precipitate the problems are rarely addressed.

The Congressional Research Service report of 5 March 1990 reveals the continuous decline in real spending of Federal funds for Indian related programs. The overall decline in the 1980s in agriculture and livestock business has precipitated many economic problems for tribes. Resource development and production on Indian reservations has declined and revenue losses especially those related to the drop in oil and gas prices have caused major economic problems for tribal governments and individual tribe members. Declines in either agriculture or in energy resource production would have caused economic recession for Indians, but both, occurring at the same time have caused economic depression approaching the effects of the 1930s.

The underlying causes of most troubles in Indian affairs are economic. There are many factors that contribute to the impoverished economic status of tribes and individuals but few people know or understand them and fewer still deal with them. Cultural, social and intercultural problems are continuing to adversely affect, compound and change those conditions and thereby inhibit economic stability and growth for Native Americans. As the Indian economic status declines the problems intensify and new problems arise. The entire system is suffering the stress induced by economic decline.

The lack of appropriate interface between the general economy of the country and those of the tribes is an overriding problem in resolving Indian economic troubles. Recent court decisions, concerning Tribal sovereignty and jurisdiction regarding activities and issues on and around reservations, has presented a changed, difficult and insecure environment for continuing business and starting new businesses on reservations. The proposed Senate Bills S1203 and S1650 can substantially improve that business environment.

The most successful economic results for producing income for Indians has been the development of energy resources. Conversely dependance on oil and gas income has subjected the energy resource tribes to the difficulties of fluctuating prices. The problems associated with declining income have generated actions by the tribal governments that have compounded the economic problems of doing business with the tribes. Several Tribes have tried to solve some of their revenue shortfall by increasing and/or adding severance taxes to the production of those resources. The process has been counterproductive whenever it has been applied. The additional economic burden of the second severance tax (i.e. in addition to State severance tax) on Indian oil wells has diminished their profitability. The additional tax has been a major factor causing Indian wells to lose the benefits of work-over and recompletion investments and investments for new wells. It is a simple economic fact that wells that provide more profit, because they do not have to pay the larger tax, receive greater investments and efforts to maintain and increase production. I recently completed a production report comparing the decline of production on Ute tribal wells with non-tribal wells following the institution of the Ute severance tax. The report shows the decline on Indian wells is much greater than on the non-tribal wells. Dramatic increases in other costs (e.g. right-of-ways and surface use) have additionally burdened operations and thereby diminished investments. The actions taken, by the tribal governments, to solve their immediate economic problems have greatly reduced prospects for future investments. Greater profitability at reduced economic risk exists in the non-tribal sectors of the economy. Fear of additional taxes, of additional costs to operations and the absence of a secure appeals process has discouraged industry operations on reservations immeasurably. Without a secure industry interface, the tribes have limited chances for new economic development.

The basic factor or element of the problems of Indian affairs is the prevailing absence of information. The information void exists in varying degrees in all of the participant groups (government agencies, industry, tribes, public). Accurate information and its dissemination to all those affected is essential to any hope for solutions. Unless this basic fault is corrected the conditions that have precipitated the current problems will continue. Much of the data that must be exchanged is not in forms appropriate to those who must have it to become informed. Unless it is carefully prepared and disseminated, and understood, the knowledge necessary to establish needed communication between parties will not occur.

At present there is limited *effective* communication among and between the parties to the problems. The various agencies chartered to provide and maintain communication have failed to do so. Outstanding prejudices and perceptions make communicating the facts necessary for understanding the problems very difficult. The participant groups involved just don't understand the basis for the actions of the others. Its that simple.

The Oil and Gas industry is suffering the consequences of these information voids. Little has been done in the past, by the members, to stay abreast of the conditions and circumstances of the tribes. The lack of information about tribes and limited public relations activities has contributed to the information void that has produced misconceptions now held by both Indians and industry. Communications by the industry with the BIA, particularly at the reservation level, has been and is still very poor. Policy and procedural changes by the BIA that have marked impact on Indian affairs have been made with little attention or input by the members of industry.

I feel, as do many in the oil and gas industry, that Congressional policies of "self determination" reflected in Subchapter M of CFR 25 have been misinterpreted, misapplied and certainly misunderstood. Many detrimental actions have resulted that have added to the economic problems of tribes. Self determination policy has often produced actions that have been counter productive to the long term interests of the tribes. I find few activities that have provided much promise for the economic success that is essential to attaining a better standard of living for Indians. A definitive and concise publication, regarding self determination policy from a congressional source, would be invaluable.

The BIA has been greatly criticized for its role in the status of Indian conditions. Much of that criticism, at least at the reservation level, has been unfair and has been made by people that have suffered the same information voids that plague so many people and organizations effected by Indian affairs.

Industry has for many years dealt with tribal governments as they would any other business entity. The fact is that each tribe is a sovereign power. Most have their own constitution, laws, customs and language. Virtual nations within the nation. There is a remarkable absence of understanding within the oil and gas industry concerning tribal conditions and how those conditions affect the conduct of business with the tribes. To my knowledge only a few have truly recognized the need to address these problems and have provided funds and efforts to investigate and research possible solutions for dealing with the basic factors affecting Indian affairs. Most of the company members of RMOGA have, however, expressed hopes for improving their relationships with the Indian community and tribal governments.

Indian Affairs - S1203, S1650 and Dual Taxation
Tribal Issues Committee - RMOGA

There is a general acknowledgment among those members of the symbiotic relationship that exists between the energy resource tribes and the oil industry. They recognize that actions which work to the detriment of either symbiotic member will, in the long run, be damaging to both. A great many people in other groups and agencies, including many Indians, have not recognized this fact.

If the fears and uncertainties that are being expressed by the companies of the oil and gas industry are consistent through other industries it will be very difficult to find the investments needed to revitalize the Indian economies; even with the proposed incentives.

It would seem appropriate that the companies presently doing business with the tribes be contacted and surveyed concerning the problems that they face in the course of operating their reservation businesses. An evaluation, to determine if the incentives proposed would be seen as adequate to encourage renewed investments, would be enlightening and valuable.

The Utah State Legislature recently passed a severance tax bill (HB 110) to provide changes in tax rates, earned tax credits, and incentives to encourage investments by the oil and gas industry. Testimony (at legislative hearings) by the Utah Director of Oil, Gas and Mining, Dr Diane Neilson, stated that the bill will "contribute to the conservation of resources". The loss of oil and gas resources that is occurring because of the excessive burden of dual taxation is an issue that has been neglected in most of the documentation that I have seen. The incentives have already produced results in the Uintah Basin of Utah within the Uintah and Ouray Reservation.

It is essential that the oil and gas industry and the tribes convey an understanding of their symbiotic relationship to State and Federal Governments. I am convinced that if legislation does not address and solve the dual taxation of production from Indian mineral interests, further litigation will be the result.

Until the conditions for doing business with the tribes on reservations are perceived to be competitive with or better than with non-Indian commerce, the economic status of Native Americans will continue to deteriorate.

I would be most happy to provide copies of reports that I have generated, information that I have accumulated and answer any inquires that the committee might desire.

Respectfully

Fred E Payne

Mark Berkman
Senior Consultant
National Economic Research Associates, Inc.
San Francisco, California

My name is Mark Berkman, I am a Senior Consultant with National Economic Research Associates, Inc. (NERA) a private economic consulting firm. I am here today on behalf of the Native American Tax Initiative Task Force to discuss the effects of state taxation on Indian resources and economic development. I base my remarks primarily on my experience as a consultant to the Crow, Arapaho and Shoshone Tribes on energy and tax matters. I served as an expert witness for the Crow Tribe in 1984 during the Tribe's successful lawsuit to strike down Montana's severance tax on Indian coal (Crow vs. Montana). In that case, the 9th Circuit Court of Appeals raised three questions which I addressed. First, did the severance tax limit the ability of the Crow Tribe to manage its natural resources? Second, did the state need the coal severance tax revenues to cover state costs related to energy development of tribal coal? And finally, did the state tax limit the Crow Tribe's ability to provide government services?

More recently I have studied tax issues on the Wind River Reservation in Wyoming for the Arapaho and Shoshone Tribes. I compared the state revenue earned from Indian oil and gas production to the level of state and local services provided to the reservation.

The basic point of my testimony today is that state taxation of Indian natural resources unquestionably limits tribal abilities to manage their own resources and the income tribes can derive from their own resources. This means that the tribes' goals of economic self-sufficiency are thwarted, that the tribes' efforts to protect the environment are weakened, and that the tribes' attempts to preserve tribal culture are threatened.

Let me explain briefly why state taxation limits tribal trust resource income. For many tribes, natural resources are the primary source of income. Reservations are rarely the location of successful businesses, apart from resource-related enterprises. Consequently, the only way for many tribes to begin the difficult struggle towards self-sufficiency is to exploit their natural resources. Unfortunately, state taxes obstruct tribal progress. Let us consider, as an example, how a state tax limits Indian energy production. In simple terms, a tax will increase costs thus discouraging production. This point was lost on the majority of the Supreme Court in its recent decision regarding Cotton Petroleum vs. New Mexico.

A simple example should reveal why that decision was so wrong. Consider that you are an oil company contemplating investment in two parcels of land -- one off a reservation and one on, but within the same state. These parcels offer you the same oil production opportunities. That is, they offer the same amounts and same qualities of oil and are likely to present the same extraction costs. In the one instance you would be faced with, say, an 8 percent state tax, and in the other instance you would be faced with a 14 percent tax -- the 8 percent state tax plus a 6 percent tribal tax. It is quite clear in that circumstance that as an investor you would opt to begin production off reservation not on reservation. You can simply earn a greater return in light of the lower tax.

The coal severance tax experience in Montana and Wyoming provides rather dramatic proof that this simple example really applies. Wyoming elected to impose a much lower severance tax on coal than Montana (17 percent vs. 30 percent of gross value).[1] As a result, Wyoming production grew at a much more rapid clip. Prior to the divergence in tax rate in 1976, both states produced close to 30 million tons per year. Following Montana's enactment of its 30 percent severance tax in 1976, coal production went flat. Production in 1980 was the same as in 1976. In contrast, Wyoming production grew to 95 million tons by 1980. (See the attached figure.)

Montana began to question the wisdom of its high tax rate in view of this outcome and in 1987 the state legislature began to reduce the tax on new coal contracts to encourage coal production. The success of this tax reform has led to a gradual reduction of the severance tax on all subbituminous coal production to 15 percent by 1991.

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[1] Wyoming imposes two key taxes on coal production, a 10.5 percent of gross value severance tax and a county levied ad valorem tax of approximately 7 percent.

I think there is a second point worth making here. During the Crow case, Montana argued that the reason the Crow had been unsuccessful in further developing their coal resources was that they provided an unstable business partner. The state contended that the tribal government was too unstable and unpredictable and that is what turned off additional energy investors. I would argue that if tribes are perceived as more risky business partners and reservations are considered as undesirable investment locations due to isolation, jurisdictional uncertainties, and other uncertainties, then the impact of state taxation is even greater. In order for tribes to compensate for this at least perceived greater risk, they must be able to offer lower extraction or business operating costs within the reservation in order to attract business. They cannot accomplish this if a state tax is imposed.

Let's now turn to the question of how a state tax affects tribal resource management prerogatives. Consider environmental management. Indian tribes are probably more concerned about their environment than Americans at large. The environment, after all, is a critical component of their culture. Natural resource taxation provides tribes with two means to protect the environment. First, tribes can regulate production via tax. Lower taxes promote production, higher taxes discourage production. Thus, tribes hoping to avoid rapid development and associated environmental degradation will seek higher taxes. While this may be at odds with self-sufficiency goals, the tribes can use the tax to strike the right balance between development and environmental protection. A state tax limits tribal flexibility in this regard, because it either makes impossible any tribal taxation at all or blunts the effect of tribal tax measures.

Second, tribes can impose taxes to compensate for environmental damage such as air, water and noise pollution. In fact, the federal government does precisely this as illustrated by the surface mining reclamation tax. The application of such taxes is gaining popularity. Several bills now before Congress propose emissions taxes to address acid rain and global warming. Again, a state tax limits tribal abilities to set the right tax rate.

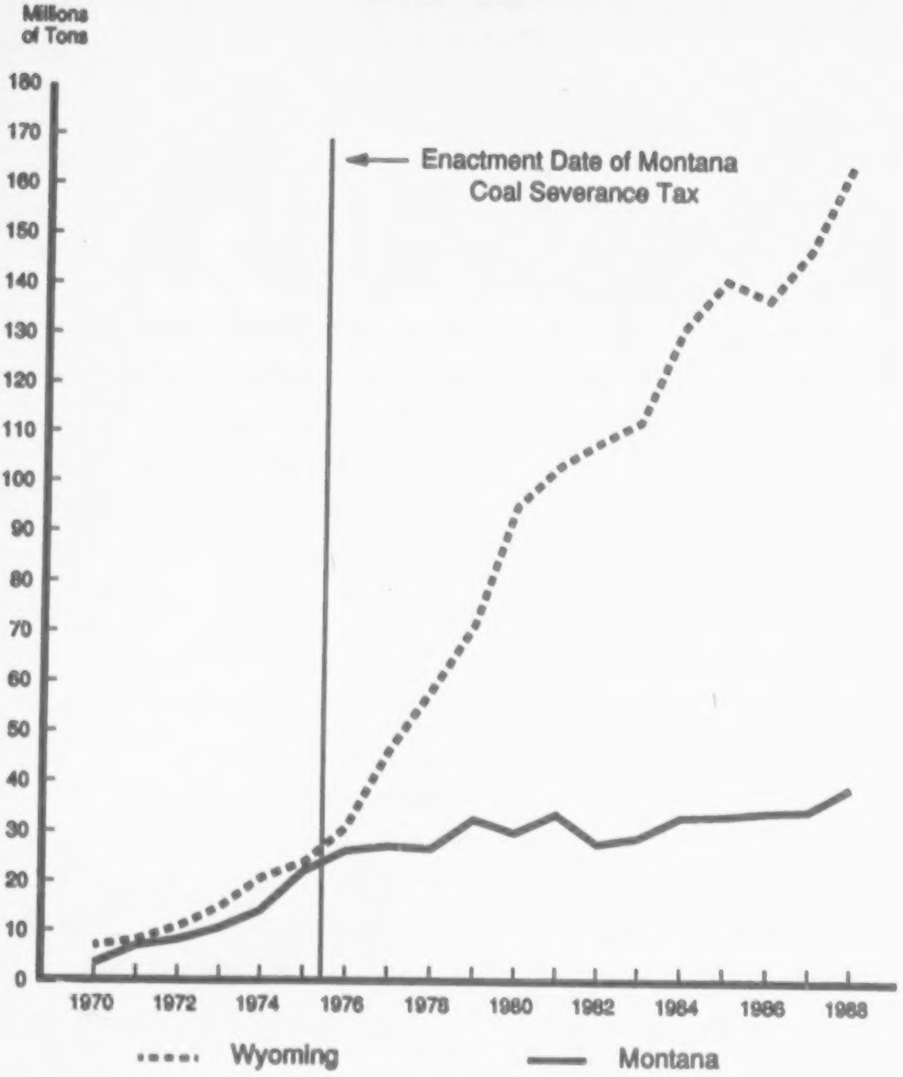
Let's turn to the question of cultural identity. Many tribes are concerned that rapid energy development will threaten tribal culture. The threat comes from the influx of insiders associated with large-scale energy projects. Since energy taxes can be used to regulate production, they can also be used to regulate development. Once again tribes must strike a balance between development and cultural integrity. While integrity must be protected by regulating development, tribes must also rely on energy development to pay for cultural programs including education, arts, and even land consolidation. Once again, a state tax limits tribes' ability to strike the appropriate balance.

I have limited my examples at this point to natural resource taxes, but the importance of tax policy on Indian economic development goes beyond natural resources. Many tribes do not possess attractive natural resources. Even those tribes that do have natural resources should seek to diversify their economies. Unfortunately, tribes face a serious obstacle in attracting business enterprise -- they cannot distinguish themselves through a more attractive reservation tax policy -- because even without a tax the reservation and non-reservation taxes are merely equal. No special incentives for on-reservation development are provided as a consequence. This is true especially in the West where state corporate income taxes are already quite low or non-existent. To remedy this, tribes need assistance from both state and federal government. Tax policies designed to make reservations more attractive places for business investment should be seriously studied. State and federal tax credits and incentives, for example, could accomplish this. Empirical evidence suggests that state and federal tax credits could provide, if tailored carefully, successful incentives for economic development in difficult investment climates. Congress currently has before it several bills towards this end.

In sum, tax policy at all levels of government -- tribal, state and federal -- must be considered an important tool to promote Indian economic development. The coordination of these policies is critical as well.

THE MONTANA COAL SEVERANCE TAX HAD A PROFOUND EFFECT ON MONTANA COAL PRODUCTION

1970 - 1988



Testimony of Governor Bill Anoatubby, May 1, 1990

Mr. Chairman, members of the Committee, other guests and friends, my name is Bill Anoatubby. I am the governor of the Chickasaw Nation, a federally-recognized Indian nation which is located in south central Oklahoma. The recognized jurisdictional area of the Chickasaw Nation includes more than 7,648 square miles of the present state of Oklahoma, encompassing all or parts of 13 Oklahoma counties. Our current tribal citizenship is 26,210. Included in our area of the state are an additional 250,000 members of other tribes and non-Indians who are our neighbors, friends and co-venturers in business and economic development.

As a policy matter, we work closely with the cities and counties in the Chickasaw Nation pursuing business and industrial development which will be mutually beneficial to all of us. As Chickasaws, we function within many communities and with many roles.

We believe that what is good for the Chickasaw Nation is good for Oklahoma; we hope that what is good for Oklahoma would be good for the Chickasaws. Our experience with the Oklahoma Tax Commission speaks to the contrary. The business incentives we have as a sovereign government will ultimately benefit the population of the Chickasaw Nation with more jobs and greater income and benefit the state with increased tax revenues as a result.

I am very pleased and honored to have this opportunity to speak to you today about the need to create and refine incentives for the private sector to do business with tribal governments and on Indian land. This is a priority topic which is very dear to our tribal government and I hope that you will bear with me as I make an attempt to describe the conditions which are currently facing the Chickasaw Nation.

It is very important that each of you understands that the problems of tribal taxation on business and industry are not limited to just reservation tribes. The Chickasaw Nation and, indeed, all of the 39 federally-recognized Indian tribes in Oklahoma are also sharing in the problems of tribal taxation. The business development problems of each tribe in Oklahoma may be somewhat different but they are also quite similar in that most tribes in Oklahoma have no reservations, per se, and only limited land in trust. We do not want the law to make this a problem for us.

Please allow me to confine my remarks to the Chickasaw Nation and, if you will, imagine the same problems in scope and in context as they apply to all the other Indian tribes in my state.

The Chickasaw Nation is the recognized tribal authority over all Chickasaw lands located in our jurisdictional area. Because of treaties between the Chickasaw Nation and the Choctaw Nation of Oklahoma, we also retain an undivided one-fourth interest in many parcels of land which are located in our neighboring Indian nation, the Choctaws. Because of the manner in which the state of Oklahoma was created from Indian lands, and due to the myriad federal laws, rules and regulations which govern the remaining Indian lands-- especially those of the Five Civilized Tribes-- our problems in the devisement and assessment of tribal taxes are extremely intricate and deserve competent attention.

The tribal government retains jurisidiction over the lands owned by the tribe and over those lands which are held in trust for the Chickasaw Nation by the United States Department of the Interior. That jurisdiction is limited, however, by many laws which have had the effect of interfering with our abilities, desires and plans to fulfill our obligations to the government of the United States in becoming self-sufficient, self-governing and economically independent. This condition has impeded the tribal government in fulfilling its responsibilities to its citizens, who rely upon the tribal government to make the tribe less dependent on federal monies.

The federal government has adopted an overall policy which is designed to allow and to assist tribal governments in their efforts at decreasing their tremendous reliance upon federal funds for government operations and for the delivery of services and programs to the Indian people. To meet these goals, tribal governments have been mandated to find alternate sources of tribal income. Most governments rely heavily on their ability to levy and collect taxes from their citizens, both private and corporate. Most governments have a land base upon which to establish their taxation structure. Most governments have only their own taxation structure, or that of their political subdivisions and superiors, with which to contend. Indian tribal governments, however, have to contend with *all* of these levels of taxing authority and, in attempting to exercise their own authorities and abilities to become more self-reliant, they are being increasingly faced with confused federal direction and uncooperative state officials.

On the one hand, we have been given the responsibility of developing our autonomy but, on the other hand, we have been given no means by which to develop that autonomy. We are empowered to control and regulate business and industry which might locate on tribal lands with that control limited first of all to any provisions contained in federal law. As additional restrictions, the courts have recently held that, regardless of an industry's location on tribal trust lands, the controls and regulations, including taxing authorities, of municipalities, county government and the state government are also to be applied if that tribal trust land is located inside the *jurisdictional* boundaries of any or all of those levels of government.

What this in effect does, is subject those businesses and industries to not only the taxing structure of the state, county and perhaps municipality in which they are located, but also to the taxing structure of the tribal government. The courts have turned what at first was an advantageous situation into a detriment for tribal governments and a deterrent to business development. We are now not only impeded in attracting private industry and business to build on tribal trust lands, but also we have a serious erosion of our tribal taxing authority. No industry wants to locate on tribal lands and subject themselves to a tribal tax if they are also going to have to pay state, county and local taxes, even if the tribal taxes are lower than any or all of the other three levels of taxation.

The effects are that tribal governments have lost in every way. We have lost the sovereign advantage of developing a tax base. We have basically lost the opportunity to provide employment for our citizens by locating private industries on tribal trust lands. We have lost the sovereign incentive edge necessary in business as we develop and exercise governmental controls further enabling us to practice some degree of autonomy.

If I were a more cynical person, I would say that this is just another example of the promises made to Indian people which were supposed to last "as long as the rivers run and the grass grows." Being a more practical person, however, I submit to the members of this committee that *the basic principles and philosophy of Indian self-determination are being compromised*. Tribal governments are being told by the United States government that we must decrease and eventually cease our dependence upon federal funds, yet it seems that every time we attempt to assist in this endeavor, we are stopped from doing so.

If the tribes are to succeed in relieving the federal financial burden by developing businesses and good incomes, then the federal government must support us in our efforts with developing meaningful incentives to help us attract private business partners and banking assistance. I encourage the members of this committee, and all the members of Congress, to fulfill their obligations and responsibilities to the Indian people and their governments by providing certain federal tax and other incentives for private business and industry which choose to locate on tribal lands. This will immediately help the tribal governments and it has the potential to help all of America. S.1203 and S.1650 are both in the nature of positive such efforts.

We are extremely proud of our own Senator David Boren and of his Cherokee heritage. We are grateful for his vision and stature and for his willingness to assist us in these matters. I appreciate your giving me the opportunity to offer this testimony. My thanks to you, Mr. Chairman, and to all the members of the committee. I gladly offer my assistance in whatever way I can to help achieve a solution to this problem.

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TESTIMONY OF JACOB VIARRIAL, GOVERNOR,
PUEBLO OF POJOAQUE
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATE SENATE
MAY 1, 1990

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, my name is Jacob Viarrial. I am Governor of Pojoaque Pueblo in New Mexico. I am here today to testify before the Committee on the disincentive to economic development on Indian reservations that is caused by the imposition of state sales taxes.

The Pueblo of Pojoaque is pursuing an aggressive program of economic development on our reservation. The Pojoaque Reservation is the economic center of the Pojoaque Valley in northern New Mexico. We operate several businesses on the Reservation, including a full-service supermarket, a hardware store, and a tourism center. In addition, we lease lands on our commercial strip to other retailers such as gas stations, fast-food restaurants, and drug stores.

The State of New Mexico imposes a tax of 5.5% on the gross receipts of retail sales by non-Indian businesses operating on the Reservation. Effective February 1, 1989, the Pueblo of Pojoaque imposed a tax of 4% on the gross receipts of all retail merchants operating within the exterior boundaries of the Pueblo, including businesses owned by the Pueblo or its members. The Pueblo tax applies to all the businesses taxed by the state. Some businesses--primarily those owned by non-Indians--are subject to both taxes.

Both the state and tribal gross receipts taxes are imposed on the retail merchant but are passed on to purchasers. If both taxes are enforced, customers making purchases on the Reservation would be paying nearly twice as much tax as they would pay off the Reservation. It is unlikely that any customer would continue shopping on the Reservation under those conditions. If businesses on the Reservation lose customers because of the higher tax, they will move their businesses off the Reservation. This exodus is very likely as we are near Santa Fe and many off-reservation retail opportunities exist. If businesses leave the Reservation, the Pueblo will lose both the income from business leases and the tax revenues.

We imposed our gross receipts tax for the simple reason that we needed the revenue in order to provide governmental services. Presently, neither the state nor local governments supply services such as police and fire protection needed by the residents of the Pueblo. In the past, we had used the profits from our business enterprises to fund the provision of governmental services. Because we were using the profits to fund our government, we were unable to re-invest the income from our enterprises back into those enterprises. As a result, our enterprises were suffering at a time when they should have been expanding. As we considered solutions to the problem, we realized that it would be best to separate our enterprises from our governmental operations in order to operate both more efficiently and effectively. The problem, of course, was that we needed revenue for governmental services; the obvious solution was to exercise our power to tax. Since retail sales are the primary economic activity on the Reservation, they represent the only feasible tax base for the Pueblo.

In addition, a substantial percentage of the Pueblo's income is from leases to businesses operating on the Reservation. That income also is used to pay for essential governmental services such as police protection. The income from business leases, however, is not enough to provide all the services that Pueblo residents need. The Pueblo in the past has enjoyed considerable funding from Congress for our governmental operations; just last year Congress earmarked $100,000 for law enforcement at Pojoaque. However, in making our request to Congress for those funds, we assured our congressional supporters that the Pueblo also would devote its own money to the law enforcement program, and we have done so. In order to raise the needed revenues, the Pueblo imposed a gross receipts tax on the businesses operating on the reservation. The power to tax is one of the sovereign powers of the Indian Pueblos. Pojoaque has found it necessary to exercise that power to maintain tribal self-sufficiency.

We are trying to attract more businesses, not lose them. It is the goal of the Pojoaque Pueblo to become economically self-sufficient. In order to achieve that goal, the Pueblo must be able to use all of its sovereign powers, including the power to tax. Just as states and counties and municipalities impose a gross receipts tax on the privilege of doing business within their boundaries, the Pueblo must impose a gross receipts tax on the privilege of doing business within its boundaries.

We need more services on the reservation to maintain existing service levels. Moreover, the better the services we can provide, the more likely the Pueblo will be able to attract new businesses and proceed with its economic development program. The state tax stands in the way of economic development. So long as the state imposes its tax on businesses on the reservation, we cannot in reality collect our tax. We are in an impossible position. If we exercise our sovereign right to tax, we will drive business away. Yet we need to tax in order to provide services to attract business.

We believe that the state has no right to tax sales on the reservation because that right is preempted by federal law. Because of the state tax, we cannot collect our tax out of the feat that the double taxation would drive business away; to keep from losing business because of a double tax, we have not yet started to collect our tax. Instead, the Pueblo is offering taxpayers a temporary credit if they meet certain conditions. Since it is the Pueblo's position that the state tax is illegal, we are giving the taxpayers a credit on the tax they owe the Pueblo if the taxpayer applies to the state for a refund of the taxes the taxpayer has paid to the state since February 1, 1989, and assigns the claim for refund to the Pueblo. The taxpayer must also apply for an Indian trader license under the Indian Trader statutes, 25 U.S.C. §§ 261-264, in order to claim the credit. All of this, of course, is to provide the appropriate legal circumstances for litigation to challenge the state taxes.

If the Pueblo tax were the only tax imposed upon sales on the reservation, we could promote economic development. We would have additional revenue to support government services and we would be able to offer businesses a favorable tax rate to attract them to the Reservation. In other words, the Pueblo could develop and implement a complete economic development policy to help our members escape the cycle of poverty. The state tax is clearly a disincentive to economic development and the right of Indian self-determination. We simply do not have the policy tools to encourage economic development that the states and the federal government enjoy. Yet we are told over and over that we must encourage economic development and that we must end our reliance on federal funding. This we cannot do until federal policy frees us from the negative effects of state taxation on the reservations.

The state is aware of our position but it will not stop taxing on the Reservation. To the contrary, the state has become more and more aggressive in its tax policy on Indian lands. The state agrees that it cannot tax sales to Indians on the reservation; it does not agree, however, that it cannot tax sales to non-Indians on the reservation, regardless of the effect on the economic and tax policies of the Pueblo. Our options, therefore, are limited. We could go to court and prove that the state tax is preempted by federal law. However, because of the time, the expense, and the fact that there is no guarantee that we will win, that is an unattractive option.

We also could seek a negotiated settlement with the state, and in fact are doing so. Whether these negotiations will succeed, of course, is an open question and, very frankly, the Cotton Petroleum decision has hurt our position and emboldened the state. The state well may believe it has no real reason to negotiate since Cotton Petroleum indicates a radical shift in the Supreme Court's approach to state taxation on Indian lands. Moreover, the consequences of double taxation are felt only on the reservations; if our merchants leave and establish their businesses elsewhere, the state can still tax them. Ironically, the real effect of state taxation is to discourage non-Indians from doing business on the reservations. Obviously, non-Indians possess the capital and the entrepreneurial experience that we want to bring to Pojoaque; state taxation may deprive us of those resources.

The best alternative that we have is to seek federal legislation that addresses the disincentives to reservation investment. Two bills that would establish incentives for businesses on reservations--S. 1203 and S. 1650--currently are awaiting action. We believe that these bills are a good starting point for the development of federal legislation that will help to alleviate the disincentives to economic development on the reservations. The tribes should have the option of establishing their own tax and economic policies free from the pernicious effects of state taxation that destroys the effectiveness of those policies. If, however, Congress is unable or unwilling to enact legislation to prohibit expressly state taxation, then federal tax incentives that offset the detrimental effect of state taxes--and other well-documented obstacles to reservation development such as lack of infrastructure--should be enacted.

The need for a federal solution is clear. Congress must either offer incentives for reservation investment or simply admit that no effective federal policy exists for reservation economic development. If there is to be no federal policy for economic development on Indian reservations, then Congress should commit itself to providing federal financial support to address the socio-economic problems that will prevail in the absence of sound reservation economies.

TESTIMONY OF
LAWRENCE D. WETSIT

Mr. Chairman and members of the Committees, I am Lawrence D. Wetsit, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. Approximately, 5,000 Indians reside on our Reservation in northeastern Montana, which contains over 2 million acres.

My Tribes had an operating budget in the last fiscal year of $5,800,000. The Tribes spend a substantial portion of our budget on essential government services, services which are otherwise unavailable or very difficult to obtain. Because of the economic development on our Reservation -- now jeopardized by the Cotton Petroleum decision -- we are very fortunate to be able to supplement the meager federal funds available to us. Of the programs described below, we fund the bulk from our own operating budget -- in some cases, federal funds are also used.

First, the Tribes provide programs to maintain public safety. We operate law enforcement programs, support a volunteer firefighting unit, and operate sanitation programs, including a solid waste disposal program. The solid waste program is particularly important to outlying areas that have no other solid waste disposal service.

Second, in the area of health care, the Tribes operate renal care and alcohol treatment programs. As you know, the rate of diabetes -- and the demand for dialysis -- is very high among Indian people. If the Tribes did not provide this care, dialysis patients would have to be transported such great distances for treatment that it would not be feasible in some cases. In addition, alcoholism is a serious problem on the Reservation and we provide inpatient treatment as well as outpatient counseling and rehabilitation to combat this terrible disease. We hire alcoholism counsellors in each local school on the Reservation. The renal care and alcoholism programs are essential to maintaining tribal health.

Third, the Tribes provide social and welfare services. We provide nutritional and other services for the elderly. We also offer cold weather aid to destitute members and disaster assistance to the community when needed.

Fourth, the Tribes provide educational assistance that permits many of our students to get a much needed education. We operate a community college and a college extension program at Fort Peck. We also provide education incentive awards to Indian students obtaining a higher education outside the Reservation, and to high school students who attain special achievements.

Fifth, the Tribes operate programs to protect and enhance the Reservation environment, such as an animal control program and a fish and wildlife program. We also operate an Office of Environmental Programs that handles air quality programs and water studies.

Finally, the Tribes maintain a bus system within the Reservation to connect our scattered communities, and to transport Indian or non-Indian senior citizens for shopping, medical or other trips outside the Reservation.

We receive substantial revenues from bonuses, lease rentals and royalties from oil and gas leasing on tribal lands, and from operating our own oil and gas wells on several tracts of tribal land, and from agricultural leasing. Since 1982, we have imposed a severance tax on oil companies doing business on our Reservation trust lands; severance tax payments amounted to $357,000 in the last fiscal year. The Tribes have also taxed utility property on Reservation trust lands since 1987. This tax which produced over $1,100,000 in revenue in the 1989 fiscal year. Thus, about 25 percent of our budget is from these taxes. Without them, we could not provide begin to provide the services to Reservation residents that I described above.

Indian tribes have clear governmental authority to tax activities and transactions on Indian lands, and need to exercise this authority to raise desperately needed governmental revenues for the services and programs they provide on reservations. The Supreme Court's recent decision in the Cotton Petroleum case also allows states to tax some activities of non-Indian companies on Indian trust land. This decision is disastrous for tribes, for it discourages economic activities on Indian lands, which are among the poorest areas of the country. Cotton is absolutely inconsistent with the goals of modern federal Indian policy: to promote Indian economic development and tribal self-sufficiency. These goals can never be achieved if Cotton stands.

Since Cotton, my Tribes have had to reduce our royalty rate in an attempt to attract mineral lessees to our Reservation. Even so, no major oil company has expressed interest in leasing our lands since Cotton, and some existing oil producers have reduced or ceased their activities. The only way a tribe could avoid the disadvantage Cotton creates for Indian economic development is to forego entirely its right to tax. This is a cruel choice, for it provides a course which if taken would bankrupt tribal governments.

My Tribes were so concerned by the Cotton Petroleum decision that we have sponsored several meetings of all Montana tribes, appropriate state officials, and representatives of the industries which do business on Montana reservations. The purpose of our meetings was to seek common ground with the State, industry and other Indian tribes in finding a solution. We found that industry representatives were all as concerned about Cotton as are tribes. We also found the State of Montana sympathetic to a solution - so long as its own tax revenues are not reduced. I believe states appreciate that while the Cotton Petroleum decision preserves a source for state tax revenues, it does so at the unacceptable cost of further impoverishing the poorest areas of the state.

As our discussions proceeded, we came to focus not just on the double taxation allowed by Cotton, but more broadly on federal tax incentives needed to promote private enterprise on Indian lands. For we all concluded that without a substantial increase in private investment on Indian lands, Indians are doomed to poverty.

The public sector provides most jobs today for Indians on reservations. But the public sector alone is not large enough; nor is it healthy for Indians to be dependent on public funding. And even where a reservation has attracted major industry -- as with A & S Tribal Industries on my Reservation, an enterprise which employs over 400 Indians and is the largest industrial employer in Montana -- unemployment rates are still high, over 25 percent at Fort Peck. For Indians to escape poverty, more private enterprise must be encouraged on Indian lands.

In our meetings, Montana tribes, the State and industry agreed that federal tax credits can provide an incentive for this needed private investment. We decided to support federal income tax credits for the following business expenditures on Indian owned lands:

1. Tax payments to state, local and tribal governments. Currently, these are deductible. A credit could be total (i.e., 100 percent) or partial (i.e., some rate between 100% and 34% - the value of the present deduction).

2. New investments made in plant and equipment. This could be a partial credit -- say 10 percent as proposed by Senator Baucus in S. 2348.

3. Wages paid Indian employees, as in S. 1650, Senator Domenici's bill.

4. Income earned, as in S. 1203, Senator McCain's bill.

5. Royalties paid to Indian mineral owners. These are now deductible business expenses. The credit could be full or partial -- between 34 percent and 100 percent.

These tax credits could act together to serve as a comprehensive inducement to private enterprise to provide economic opportunities in Indian country. The goal of this approach is broader than simply eliminating the disincentives created by the Cotton Petroleum decision, for there are many other obstacles to private capital investment in Indian country. Our concept is to create a net positive incentive for businesses to operate on Indian lands. This approach does not require a direct federal expenditure. Indeed, if private enterprise is encouraged by these credits to increase operations on reservations, the economic impact on federal revenues actually will be neutral or positive, for public social and welfare expenditures will drop, the health and other expenses associated with persistent poverty will also decline, and federal income tax revenues will increase.

I have attached an appendix showing that the total mineral severance taxes collected by states on Indian lands is in the $50 to $75 million range annually. We have not been able to estimate personal property taxes, corporate income or gross receipts taxes for mineral and other companies doing business on Indian trust lands. Since companies currently deduct all these taxes, the actual short-term cost to the Treasury would be 66 percent of the taxes imposed.

We can also estimate the effect of a royalty tax credit. MMS reports that Indian received royalties in 1987 and 1988 of slightly over $100 million annually. A royalty tax credit would thus have a short-term cost to the Treasury of 66 percent that amount.

Mr. Chairman and members of the Committee, tribes are doing all that they can to end the scourge of poverty that has plagued Indian country for so many generations. We urge Congress to act to help us bring this about, so that within our lifetimes tribes can achieve self-sufficiency. Thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

APPENDIX

This Appendix estimates current state taxes on Indian mineral production, using the 1987-88 MMS figures. These figures show roughly $1 billion worth of annual mineral production from Indian lands, with slightly over $100,000 in royalties to Indians. About half the production is coal, almost all in Arizona and New Mexico. Most of the rest is oil and gas - more oil than gas. Of the $450,000,000 to $500,000,000 in oil and gas production, about $120 million to $140 million is in Oklahoma, and $140 million in Utah. Wyoming is $55 million to $60 million, New Mexico is slightly higher. Colorado is around $40 million and Montana about $20 million.

We have calculated mineral severance taxes in the following table, showing our assumptions in the footnotes. If our assumptions are right, state severance taxes for Indian trust oil and gas are in the $25 to $30 million range per year. Coal taxes cannot be calculated because New Mexico's tax is calculated on a per ton basis; our belief is that state taxes on coal are at least as large as on oil and gas.

	Coal	Oil and Gas
Arizona	$4,000 T - $7,000 T	$100 T1/
Colorado		$1,800 T2/
Montana		$3,000 T to $3,700 T3/
New Mexico		$4,500 T to $5,500 T4/
Oklahoma		$7,500 T to $8,500 T5/
Utah		$4,350 T to $5,500 T6/
Wyoming		$4,000 T to $5,000 T7/
		$25,350 T to $30,250 T

1/ Arizona imposes a $3.125% transaction and privilege tax on coal extraction. It has a 5% transaction and privilege tax on oil. We have not been able to calculate Arizona's education property tax.

2/ Colorado has a 6 percent severance tax.

3/ We estimate this tax to be an 18 percent severance tax. Montana is barred from imposing a coal severance tax.

4/ We estimate this tax to be an 8.5 percent severance tax.

5/ We estimate this tax to be an 7 percent severance tax.

6/ We estimate this tax to be an 4 percent severance tax.

7/ We estimate this tax to be an 9 percent severance tax.

State of Montana
Stan Stephens, Governor

Department of Revenue
Denis Adams, Director

Room 455, Sam W. Mitchell Building
Helena, Montana 59620

May 1, 1990

Senator Daniel Inouye
Select Committee of Indian Affairs
Hart Senate Building, Room 838
Washington, D.C. 20510

Dear Senator Inouye:

The State of Montana is concerned about double taxation on Indian Reservations and its effect on economic development. Accordingly the Department of Revenue is participating in a group composed of Indian, private citizens, industry, and local, State and Federal Government officials to find ways to maintain or promote economic development for Indian Reservations. I would like to submit the following testimony to the Senate Committee on Indian Affairs. My apology for not coming in person, but like most government offices, our budget is very tight.

The working group has met several times. Numerous suggestions have been explored and eliminated. Therefore, the proposal that is being presented from this working group is a compromise of all parties involved and does entail a significant amount of work. The State of Montana, as represented by the Governor's Office, the Department of Revenue and the Chairman of the Committee on Indian Affairs for the Montana Association of Counties, supports the proposal.

The working group proposal is to have a comprehensive federal tax incentive package. Federal income tax credits could be given for a variety of business expenditures on reservation lands owned by Indians. These expenditures could include:

A. A federal income tax industry credit on trust lands. These tax credits would reimburse industry for state and tribal tax payments. Currently, the tax payments are deductible; therefore, a credit could be less than 100 percent of the tribal tax paid and still make the company tax burden comparable to that on non-Indian owned land.

B. A partial credit for new investments made in plant and equipment on the reservation for expanded economic development.

Director - (406) 444-2460 Legal Affairs - (406) 444-2852 Personnel/Training - (406) 444-2866
"An Equal Opportunity Employer"

C. A credit for wages paid as in S. 1650 (Domenici Bill)

D. A credit for income earned as in S. 1203 (McCain Bill)

E. A partial credit for royalties paid to Indian mineral owners.

A combination of these tax credits could serve as a comprehensive inducement to private enterprise to provide economic opportunities in Indian country. The goal of this approach is broader than simply eliminating the disincentives created by the Cotton Petroleum decision, for there are other structural disincentives to private capital investment in Indian country. The concept would be to create: 1) a net positive incentive for businesses to operate on Indian lands, and 2) a stable financial planning base.

This approach appears most attractive to tribes, industry and states. It does not require a direct federal expenditure, nor does it have the federal government responsible for all double taxation. For in Montana only five of the approximately 30 oil and gas companies will benefit from a federal income tax credit. However, it provides a conceptual framework for state and tribal governments to continue more state specific proposals to further enhance the federal efforts.

Your support and consideration of these proposals to promote self sufficiency through economic development on Indian lands is appreciated. Montana's government is aware and sensitive to the sovereign nation concept for Reservations and asks congress to participate in developing a healthy economic environment for these people.

Respectfully,

Judy Rippingale

Judy Rippingale
Deputy Director for Tax Policy

cc: Senator Max Baucus
Senator Conrad Burns
Representative Ron Marlenee
Representative Pat Williams
Governor Stan Stephens
Denis Adams, Director
Don Wetzel, Coordinator
Indian Affairs

Jicarilla Apache Reservation
February 11, 1887-1987

THE JICARILLA APACHE TRIBE

EXECUTIVE OFFICES
P.O. Box 507, Dulce, New Mexico 87528-507
(505) 759-3242

BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

STATEMENT OF THE JICARILLA APACHE TRIBE CONCERNING DUAL TAXATION OF INDIAN MINERAL PRODUCTION

SUMMARY

Dual taxation of oil and gas operators on Indian reservations means that new drilling on Indian reservations will likely cease. Only those wells necessary to hold leased land or those wells necessary to offset drainage will be drilled. Precisely because of dual taxation, the economic return from drilling on federal or state land is far greater than the return from drilling on tribal land. Therefore, the Indian tribes have been placed at a competitive disadvantage, compared to every other government within the United States. This result is wholly inconsistent with the trust relationship between the United States and the Indian tribes and undermines the long-standing policies of Congress to encourage economic development of the Indian reservations. This situation is grossly unfair to the Indian tribes, which are at the bottom of the economic ladder in this country. Furthermore, even though the states are not significantly dependent on tax revenues from mineral production on Indian reservations, the states understandably oppose any loss of those revenues. Therefore, the Jicarilla Apache Tribe proposes a simple legislative solution that will allow both the tribes and states to maintain their respective tax revenues while making Indian lands at least as attractive as federal lands for exploration and production of minerals.

DISCUSSION

The Jicarilla Apache Tribe submits this statement to the Senate Select Committee on Indian Affairs in connection with the Committee's examination of the decision of the U.S. Supreme Court in Cotton Petroleum Corp. v. State of New Mexico, __ U.S. __, 109 S.Ct. 1698, 104 L.Ed.2d 209 (1989). The Tribe will not attempt here to discuss the merits of the technical legal issues decided in Cotton Petroleum. The dissenting opinion of Justice Blackmun forcefully describes the glaring legal errors of the majority opinion, and there is no need to restate his arguments. It is enough to point out that the new majority of the Court has demonstrated a disturbing willingness to apply its own precedents in this area in an extremely narrow fashion to the detriment of the Indian Tribes. It is, therefore, urgent for the Congress to reassert the Nation's long-standing fiduciary role in protecting the Tribes from unwarranted interference by the States.

The Tribe tried to convince Cotton Petroleum Corporation not to bring this lawsuit in the first instance, and the Tribe urged the Supreme Court not to hear this case on appeal. The Tribe was not a party to the litigation and therefore had no control over the arguments made or the facts presented. It is especially ironic that the Supreme Court chose this case, a dispute between a non-Indian company and a state government, to announce legal principles which seriously undermine the ability of Indian Tribes to achieve the Congressionally-established goals of economic self-sufficiency and true self-government. This irony has been compounded by the fact that Cotton Petroleum Corporation has sold its interests in its Jicarilla Apache leases, leaving to the Tribe the burden of living with the legacy of its lawsuit.

The Tribe takes this opportunity to draw the attention of the Senate Select Committee to the economic realities of reservation economies -- realities which the Supreme Court majority chose to ignore. Those economic "facts of life" were never adequately developed by the Cotton Petroleum Corporation or the State of New Mexico in this litigation. The Court focused on an economic microcosm consisting of less than 25 wells owned by Cotton. The Court did not hear evidence on the overall impact of dual taxation on the Tribe itself; on the ability of the Tribe to develop or lease 300,000 unleased acres within its reservation; on the diligent development of existing leases; on the loss of jobs; and on the overall effect on the Jicarilla Apache Tribe as a whole.

The economic realities were not developed in this case in large part because of the legal theory Cotton Petroleum relied on from the beginning of the litigation. Cotton Petroleum's theory was that the Commerce Clause limitations on multiple taxation by the States also apply to taxation by both a State and an Indian Tribe. That theory called for treating the Tribes as if they were States for purposes of the Commerce Clause.

The State courts and every member of the Supreme Court correctly rejected this argument out of hand. Tribes and States are very different kinds of sovereigns, and the Commerce Clause was never intended to treat Tribes as if they were States.

The Tribe does not in any way disagree with the Court's rejection of Cotton Petroleum's Commerce Clause theory.

Nonetheless, it was Cotton Petroleum's reliance on that meritless theory which produced the State court's "factual" finding that State taxes had no negative impact on the Tribe. Under Cotton Petroleum's Commerce Clause theory, there was no need to prove that the State taxes caused a negative impact on the Tribe. In fact, the Supreme Court itself acknowledged that Cotton Petroleum had not even attempted to prove any impact on the Tribe. It is, therefore, not surprising that the trial record showed no impact on the Tribe, or that the State courts found no impact on the Tribe.

Furthermore, this case was decided on a factual record describing only the operations and situation of a single, small operator on the reservation. There was no effort to determine how the State's taxes affected oil and gas development and production throughout the reservation. There was no effort to determine how the State taxes affected the ability of the Tribe to lease unexplored lands for development.

It is also very significant that the period of time the State courts were examining at the trial of this case was a period of historically high oil and gas prices. When prices were at very high levels, the effect of an 8% tax differential on investment decisions was no doubt less significant than that same differential creates when prices fall, as they have done since the trial of this case.

But even in light of the unusually high oil prices then in effect, the State court's finding, that State taxes of 8% on top of Tribal taxes of 6% had no impact on oil and gas development on the reservation, is incredible on its face. Yet the Supreme Court accepted that "fact" as a given. The Court therefore decided the legal issues in Cotton based on economic nonsense. It goes against the real life experience of even the smallest investor to suggest that siphoning off 8% of the gross revenue from an investment has no effect on the desirability of that investment.

In fact, the Court majority conceded that the State taxes had what it called "at least a marginal effect" on the demand for reservation leases, the value of those leases, and the ability of the Tribe to raise tax revenue. Yet the Court considered those effects to be too indirect and too insubstantial to invalidate the State taxes. In reaching this conclusion the majority was strongly influenced by its clear hostility to the general doctrine of intergovernmental tax immunity. The Court referred to that doctrine as a "long-discarded and thoroughly repudiated doctrine," which it refused to revive for the benefit of the Tribes. The fundamental error of the majority on this point was to assume, without any facts or analysis, that Indian Tribes are in an economic situation comparable to the United States government.

The Supreme Court has correctly rejected the claim of federal contractors that State taxation of their operations imposes an unconstitutional burden on the federal government. As applied to federal contractors, the economics of the Court's position are sound. State taxation of federal contractors does impose an indirect economic burden on the United States government, but that burden is trivial in the context of the entire federal budget and the national economy.

Furthermore, the ability of the States to tax federal contractors is a method for the States indirectly to tap into the federal Treasury. Given the enormous size of the federal budget and the complexity and diversity of the national economy, there is no serious harm to the United States government from this practice. Neither is there any serious political objection to allowing the States to derive tax revenue from business activity generated by the federal government which happens to take place within that State.

The situation of Tribal economies and Tribal government budgets is, however, vastly different. There is virtually no private economic sector on the reservations. For almost every Tribe, non-Indians who contract with the Tribal government constitute the entire economy. State tax burdens on these non-Indians therefore are enormously significant to the Tribal economy. Furthermore, the political implications of permitting the State to tap into the Tribal treasury are wholly inconsistent with the special government to government relationship between the Tribes and the United States. Allowing the States to interfere in Tribal economies violates the political relationship between the United States and the Tribes.

State taxation of persons doing business with the federal government has the effect of spreading the cost of those taxes throughout the United States through the federal budget, and diluting them to a point of insignificance. State taxation of non-Indians doing business with Tribal governments has a very different effect. The cost of those taxes is not diluted throughout the national economy, it is concentrated on the already poor reservation economy.

Tribal economies are still very fragile. They cannot absorb the indirect costs of State taxes on reservation activity the way the federal government and the national economy can do. Even a "marginal" impact on the Tribe's revenues spells economic disaster for the Tribe. For the Tribes fortunate enough to have mineral resources, the development of those minerals is the Tribal economy. The Tribe cannot choose to raise its revenues from some other source, because there is no other source.

The Supreme Court did not even address the fundamental economic differences between the national economy and the Tribal economies. It is not necessary to revive the antiquated doctrine of intergovernmental tax immunity in the context of federal contractors in order to protect the fragile Tribal economies from the burden of State taxation. The Court acknowledged that the right of the States to tax reservation economic activity is ultimately for Congress to determine. Congress is in a much better position than the Court to evaluate the real burdens that State taxation imposes on the reservation economies throughout the Nation.

Notwithstanding the findings of the State court in Cotton Petroleum that the State taxes were irrelevant to oil and gas development on the reservation, the precise opposite is true. Before the Tribe began exercising its inherent sovereign right to tax activity on its reservation, the State taxes were not a significant issue for producers. Local tax burdens on exploration and production were uniform throughout the State. Further, given the 1/8th to 1/6th royalty the Tribe receives under Bureau of Indian Affairs standard leases, development on the reservation was in many cases more profitable than development off the reservation. State taxes became an issue only if the mineral deposit straddled two States, so that a producer could choose to develop in the jurisdiction with the lower taxes if the geology permitted.

Now that the Tribe is collecting much-needed tax revenue from mineral development and is insisting on a larger royalty from production of its oil and gas, State taxes are a very significant factor. The Jicarilla Apache Reservation covers only a tiny portion of the State of New Mexico, and only a small portion of the San Juan Basin in which oil and gas are located. In these conditions, the producers are able to choose to develop oil and gas first in the locations where the costs are lowest: that is, outside of the reservation and generally on federal (BLM or Forest Service) lands.

This is precisely the situation the Tribe now faces. It is economically more attractive to drill on federal lands than Indian lands. New exploration and development of oil and gas on the reservation has virtually ceased. The few producers who have approached the Tribe about exploring new areas have demanded contractual limits on Tribal taxes or actual reductions in those taxes. Relatively low prices for oil have forced producers to invest where the marginal cost is lowest, and the 8% cost of State taxes on top of Tribal taxes has become a significant factor in that investment decision. Thus, the attempt of the Tribe to capture a larger share of the value of its own mineral resources is being stifled by the State's ability to siphon off the first 8% of the value of the Tribe's oil and gas.

The attached listing of taxes collected from Indian lands in three New Mexico counties demonstrates the unfairness of the present situation. The State of New Mexico collects over $30,000,000 annually from non-Indians doing business on the Jicarilla Apache, Ute Mountain Ute, and Navajo Reservations pursuant to leases or other arrangements with those tribes. Over $10,000,000 annually is collected from the

Jicarilla Apache Reservation alone. Over the last ten years, the State has received over $100,000,000 in tax revenue from Jicarilla Apache lands!

Market conditions will ultimately determine how high taxes on oil and gas production can be without reducing production or discouraging new development. Whatever that level of taxation may be at a given time, the Cotton Petroleum decision means that the State can take as much of that amount as it wishes. If there is anything left for the Tribe to tax, the Tribe may do so. The State is therefore given the power to decide whether and to what extent there should be tax incentives for or against production. The Tribe cannot choose to offer a lower tax burden to potential producers in order to encourage development on the reservation. The State sets the floor for production taxes, and any Tribal taxes will simply increase the total tax burden. The Tribe is precluded from competing with the State for potential investment by offering tax incentives that could encourage development and generate higher income for the Tribe in the long term. Under the Cotton Petroleum decision, the Tribe will always be at a serious competitive disadvantage compared to the State.

A legislative solution to the problems caused by the Cotton Petroleum decision could take several different forms, from expressly preempting State taxation of on-reservation economic activity that significantly involves the Tribe, to creating federal income tax credits to offset the burden of State taxes. In evaluating these options, the Congress should give considerable weight to maximizing the Tribe's ability to control the development of its own resources, as envisioned by the Self-Determination Act, the Indian Reorganization Act, the Indian Mineral Development Act of 1982, and other legislation. That ability to control development must include the ability to create tax incentives as an option for the Tribe. Further, the right to tax becomes a hollow abstraction if it is only the right to tax to the extent the State has not already captured the level of taxation the market will allow.

RECOMMENDATION

Given the present untenable situation and the view of the Jicarilla Apache Tribe that both the State of New Mexico and the Tribe should be treated fairly, we suggest inserting into the pending S. 449, the Domestic Energy Security Act of 1989, a provision that would elevate the current deduction from federal income tax that is available to producers for state and tribal taxes paid, to a federal income tax credit. This would allow the tribes and the states to continue to derive tax revenues from activity within their borders while making Indian lands as economically attractive as federal and state lands. The impact on the federal budget in such a Bill would be small, which could certainly be verified by the Office of Management and Budget or the Congressional Research Service.

Without a change in law at the federal level, the intent of Congress in enacting the Indian Mineral Leasing Act of 1938 and the Indian Mineral Development Act of 1982 will be frustrated and Indian people will suffer. Lack of mineral production from Indian land will cause an even greater burden on the federal government to provide for the needs of Indian people that might be fulfilled at least partially by tribal taxation and revenues from mineral production.

We will be happy to discuss this matter in more detail with the Committee or your staff. We urge the Committee and the full Congress to act expeditiously to correct the Supreme Court's erroneous view of economic reality and of the objectives of Congress concerning economic development of the Indian reservations.

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TRD/AS
7/19/84

TAXES COLLECTED FROM INDIAN LANDS
1981 - 1983

	1981	1982	1983
Severance taxes:			
Resource Excise	931,800	1,053,000	1,218,200
Severance	7,545,700	8,941,000	10,440,200
O&G School	4,302,500	3,854,000	3,671,300
O&G Severance	7,185,800	6,510,000	6,111,700
O&G Conservation	317,400	272,000	240,900
O&G Ad Valorem (1)	1,739,600	1,536,900	1,202,600
Subtotal, Severance	22,022,800	22,166,900	22,885,000
Property: (2)			
Electric			3,898,100
Telephone & Telegraph			151,500
Pipelines			309,100
Coal			3,173,000
Uranium			36,400
Contractors			3,200
Subtotal, Property Tax			7,571,300
Total			30,456,300

(1) Includes both the production and the equipment ad valorem taxes. In addition to the amounts reported, a total of $20,645,000 in protested payments are pending resolution.

(2) Data is for McKinley, San Juan and Rio Arriba counties only. However these counties account for the large majority of property owned by non-Indian entities on Indian lands. Net taxable values for 1983 tax year were determined and multiplied by an estimated tax rate for non-residential property for the taxing districts in which the property was located.

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Reply to Santa Fe Office

April 26, 1990

The Honorable Daniel K. Inouye, Chairman
Attention: Virginia Boylan
Select Committee on Indian Affairs
United States Senate
838 Senate Hart Building
Washington, D.C. 20510

Re: Committee Hearing on May 1, 1990
Dual Taxation of Indian Mineral Production

Dear Chairman Inouye:

The Jicarilla Apache Tribe hereby submits its written statement concerning the issues of dual taxation of mineral production on Indian lands, resulting from the decision of the United States Supreme Court in Cotton Petroleum Corp. v. State of New Mexico.

The Jicarilla Apache Tribe requests the opportunity to address the Select Committee on these issues in person, and to elaborate on the matters raised in the enclosed written statement.

On behalf of the Tribal Council, we thank you and the Committee for this opportunity to address this matter of great urgency to the Jicarilla Apache Tribe and other Indian tribes throughout the United States.

Sincerely,

NORDHAUS, HALTOM, TAYLOR,
TARADASH & FRYE

By ______________________
Wayne H. Bladh
General Counsel
The Jicarilla Apache Tribe

WHB/s
Enclosure: Statement of The Jicarilla Apache Tribe
cc: President Levi Pesata, w/encl
Carey Vicenti, Esq., w/encl

BRUCE A KEIZER, EXECUTIVE DIRECTOR
OFFICE OF THE NAVAJO TAX COMMISSION

TAXATION AND ECONOMIC DEVELOPMENT

The Navajo Nation will be facing a serious revenue crisis within the next 10 years if it is not able to develop an aggressive revenue plan which encourages economic development.

Presently, the Navajo Nation is dependent on oil, gas and coal for general revenues. Yet, these are depleting resources and, as a consequence, we can expect tax and royalty revenues from these sources to level off or decrease over the long term. (SEE Attachment 1)

However, while tribal revenue levels off, the need for services on reservations is dramatically increasing. The Navajo Nation's population rate is growing at approximately 3 percent a year. Thus, the need for services will continue to increase, but tribal revenues, if they remain tied to oil, gas and coal, will level off.

To further heighten the revenue crisis, the federal government is cutting back on federal funding for human services and the states continue to provide inadequate services to Indians living on tribal lands.

Therefore, tribes must turn to taxation programs to provide the needed revenue for essential governmental services and to develop infrastructure for business development. Tribes will need to expand their tax base in order to generate revenues from businesses and activities that are not related to the resource industry.

Tribal tax programs must develop a tax base which is not dependent on natural resources alone. This means that tribes will have to develop a taxing structure that encourages non-resource related development. A non-resource dependent economy will establish a tax base that is stable and permanent.

The presence of dual taxation interferes with the ability of tribal governments to encourage economic activity and develop effective revenue generating tax programs. (Dual taxation or multiple taxation is defined as the application of both tribal and state taxes to the same business activity occurring within the exterior boundaries of an Indian Nation.)

The Navajo Tax Commission has determined that the States collect approximately $90-100 million annually from business activities conducted on Navajo lands.

Approximately $61 million is collected from our major coal and electrical generating industries. Another $10 million is collected from state oil and gas severance taxes and approximately $5 million from pipeline industries. Thus, the states collect $76 million annually from our major resource industries alone. This figure does not include small business activity, electrical transmission lines or other small resource related companies. Consequently, if these activities were added, we believe that the states collect $90-100 million in taxes from on-reservation activities. (SEE Attachment 2.)

The states will collect nearly $1 billion in tax collections from Navajo business activities over the next 10 years. The Navajo Tax Commission will only collect $20 million annually from the same activity. Yet, we know that Arizona, New Mexico and Utah will not provide $1 billion in services to the Navajo people over the next 10 years.

The presence of dual taxation interferes with tribal self-government and economic development in the following ways:

1. Business development is seriously impeded when both the State and the Tribe are taxing the same activity on Navajo Nation lands.

   Businesses are reluctant to locate on tribal lands when they must pay both the tribal and state tax. This double tax burden, added to the lack of familiarity with tribal governments, makes it extremely difficult to produce meaningful economic growth in tribal economies.

The development of basic infrastructure is vital if tribes are to attract new business. One of the main concerns of business when deciding on business site location is whether the area has acceptable schools, roads, sewer and housing. Dual taxation deprives the Nation of adequate revenue to provide basic human services and, as a result, the Nation is unable to devote sufficient revenues for infrastructure development.

In addition, state and federal funds for essential services are painfully inadequate. Consequently, convincing businesses to locate on Indian lands is a hard sell when their is a lack of basic services.

Another effect of dual taxation on economic development is that wages paid to on-reservation citizens are going off of the reservation. As a result, bordertown economies benefit tremendously from a lack of economic growth on Indian lands.

It is Navajo money that pays the retail sales tax which encourages bordertown development. It is Navajo money that gives value to bordertown property which in turn provides the basis for bordertown property values.

According to our latest payroll study, the net profits of all individuals, businesses and corporations within the Navajo Nation for 1990 will be $750 million. Yet, the vast majority of these monies are going off-reservation. If the Navajo Nation could capture a substantial portion of this activity, the Nation would substantially increase the tax base and produce healthy economic growth.

2. Dual taxation prohibits tribes from exercising their full taxing authority.

Tribes are unable to establish a tax rate that is appropriate for a given activity. For example, if the market could bear an 8% tax on a given activity and the state tax is 4%, the tribe would be unwilling to tax above 4%. However, if the state tax was absent, then the tribe would be able to tax up to the full 8%. As can be seen, tribal revenues are directly affectd by the state tax.

As the above discussion indicates, the presence of dual taxation creates a circular problem for tribal taxation. Tribal governments must attract broad business interests in order to increase the tribal tax base. However, the business community is reluctant to locate on tribal lands without the existence of sufficient infrastructure development. Yet, the presence of multiple taxation prevents tribes from generating sufficient revenue to develop tribal infrastructure. This in turn makes it extremely difficult for tribes to attact business to tribal lands which would increase the tribal tax base.

Tribes and industry must seek practical solutions to the dual taxation problem. There are several options that can be pursued:

1. Federal Solutions.

A federal solution to the dual taxation problem seems at this point to be the most feasible and satisfying. A federal solution would be more comprehensive than a state solution and may be easier to accomplish.

(a) Senate Bill 1203 and Senate Bill 1650

Senate Bill 1203 and Senate Bill 1650 outline the tax credit incentives that would provide substantial benefit for reservation economies. Investment tax incentives will encourage investment by existing business and also will facilitate new business development. The jobs credit provisions of SB 1203 and SB 1650 will help bring down the level of unemployment among Native Americans and assure them of a steady income. Also, SB 1203 incorporates the federal corporate tax exemption that Puerto Rico has benefited from.

(b) Federal Income Tax Credit.

The federal government should provide a federal income tax credit for income earned from reservation activities. Such a credit has been given to Puerto Rico and our Carribean territories. It is commonly referred to as the Puerto Rico 936 Exclusion. The Exclusion has brought a great deal of economic growth to Puerto Rico and has been quite successful.

(c) Pass Federal Legislation Eliminating State Taxation on Reservation Lands.

The Navajo Nation supports the initiation of federal legislation which would pre-empt state taxation on Indian lands. This would encourage economic development and allow tribes to develop their own tax policy according to its own tribal needs.

(d) Payment in Lieu of Taxes (PILT).

If the states repeal their taxes on Indian lands, the federal government could pass federal legislation which would reimburse the states for the loss of revenue. This option seems to be very promising and would side track any argument by the state concerning state revenue loss. This option would not relieve the state of their responsibility to provide services to individual Indians as state citizens.

2. State Solutions.

(a) Negotiated settlements with the states concerning possible revenue sharing arrangements.

Under such an arrangement, the tribes and the states could establish a formula to share tax revenues generated from taxes collected by the states from reservation activities. This approach has not been successful in the past for Navajo, but other tribes have been successful. Note that such an arrangement would not alleviate the state from the responsibility of providing states services to individual Indians.

(b) Some form of state tax credit for businesses conducting activities on reservation lands.

The states could provide tax credits for businesses on Indian lands. For example, the state could exempt income earned from business activity on Indian lands from taxation. Also, the state could provide a credit for taxes paid to tribal governments. For example, if a business paid $100,000 in taxes to tribal governments, that amount could be credited against their state income tax liability, (or a percentage thereof):

A state credit could be quite beneficial. It would spur economic development on some of the most economically depressed areas of the state.

Also, a lower unemployment rate would relieve the state of costly social service responsibilities. Consequently, it could be argued that such a credit would be revenue neutral.

3. Litigation Solution.

If federal and state solutions are not successful, tribes need to seriously consider a broad challenge of state taxation.

After Cotton Petroleum, negotiations with states on tax sharing or tax credit issues have been difficult. Many state officials are under the impression that Cotton Petroleum has fully addressed the issue of state taxation on Indian lands. Consequently, states have taken the position that there is no need to negotiate on tax or service issues in a meaningful way.

The Cotton Petroleum case is not dispositive of the dual taxation question and, in fact, it may very well be that Cotton Petroleum may be very narrowly interpreted. The recent decision by the U.S. Supreme Court to deny review in the Hoopa Valley Tribe v. Nevins case indicates that the issue of state taxation of Indian resources is far from being settled.

The presence of state taxation on Indian lands seriously interferes with the federal policy of Indian self-determination. The Congress can help alleviate the burden of state taxation by passing federal legislation which will provide tribes with the tools to develop economically and achieve full self-sufficiency.

The time for action is now. Indian nations cannot afford to be deprived of the basic revenues needed to provide essential governmental services for its people. Federal Tax Incentives will encourage economic development and establish the necessary tax revenues which can be used for governmental services and the development of badly needed infrastructure.

ATTACHMENT 1

Office of the Navajo Tax Commission
Projected Oil & Gas Tax Revenues
(Revenues in thousands)

04/26/90

Year	Assessment Date	PIT	SEV	Total
1	1-1-90	$4,700	$3,100	$7,800
2	1-1-91	4,230	2,790	7,020
3	1-1-92	3,765	2,483	6,248
4	1-1-93	3,313	2,185	5,498
5	1-1-94	2,882	1,901	4,783
6	1-1-95	2,479	1,635	4,114
7	1-1-96	2,107	1,390	3,497
8	1-1-97	1,770	1,167	2,937
9	1-1-98	1,469	969	2,438
10	1-1-99	1,205	794	1,999
11	1-1-00	976	644	1,619
12	1-1-01	781	515	1,295
13	1-1-02	617	407	1,023
14	1-1-03	481	317	798
15	1-1-04	$370	$244	$615
	Total	$31,143	$20,541	$51,684

Note: PIT tax rate at 3% and O&G Sev tax rate at 4%
RR/TAXPROJ

ATTACHMENT 2

SUMMARY OF NAVAJO, STATE & LOCAL TAXES PAID BY MAJOR BUSINESS
ENTERPRISES LOCATED WITHIN THE NAVAJO NATION (EXCLUDING NHA)
(In thousands of dollars)
SCHEDULE I

01/26/90

I. NAVAJO TAXES

TAX TYPE	AZ	AMOUNT TAX NM	UT	TOTAL
*PIT	$2,091	$8,080	$3,926	$14,097
BAT	2,347	6,545	292	$9,184
SEV	137	34	3,263	$3,434
TOTAL/NAVAJO	$4,575	$14,659	$7,481	$26,715

II. STATE & LOCAL TAXES

	AZ	NM	UT	TOTAL
Gross Receipts	$0	$12,024	$0	$12,024
Resource	0	855	0	855
Severance	118	15,589	5,036	20,743
Conservation	0	218	0	218
Franchise/use	2,971	2,477	0	5,448
Sales/Use	8,078	844	18	8,940
Property	13,137	8,301	3,686	25,124
Unemployment	125	85	3	213
Regulatory	347	292	0	639
Income	344	140	79	563
Nat gas processors	0	311	0	311
Transac privilege	313	0	0	313
Miscellaneous	131	91	0	222
TOTAL/STATE	$25,564	$41,227	$8,822	$75,613
GRAND TOTAL	$30,139	$55,886	$16,303	$102,328

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* Includes PIT paid into escrow account
See Schedule II for detail
NR/taxes5

ATTACHMENT 2

01/26/90

DETAIL OF NAVAJO STATE & LOCAL TAXES PAID BY MAJOR BUSINESS ENTERPRISES LOCATED WITHIN THE NAVAJO NATION (EXCLUDING IHA)
(In thousands of dollars)
SCHEDULE II

	COAL MINES		OIL & GAS			PIPELINES			POWER PLANTS		ELECTRIC TRANS/DISTB			TELEPHONE/CABLE TV			
	AZ	NM	AZ	NM	UT	AZ	NM	UT	AZ	NM	AZ	NM	UT	AZ	NM	UT	TOTAL
NAVAJO TAXES																	
PIT	1,578	7,781	$163	$41	$3,871	$285	$161	$6	$0	$0	$0	$0	$49	$65	$97	$0	$14,097
BAT	1,477	6,175	0	0	0	387	246	67	0	0	0	0	225	83	124	0	9,184
SEV	0	0	137	34	3,263	0	0	0	0	0	0	0	0	0	0	0	3,434
TOTAL/NAVAJO	$3,055	$13,956	$300	$75	$7,134	$672	$407	$73	$0	$0	$0	$0	$274	$148	$221	$0	$26,715
STATE & LOCAL TAXES																	
Gross Receipts	0	12,024	0	0	0	0	0	0	0	0	0	0	0	0	0	0	$12,024
Resource	0	855	0	0	0	0	0	0	0	0	0	0	0	0	0	0	855
Severance	0	13,767	110	56	5,036	0	1,766	0	0	0	0	0	0	0	0	0	20,743
Conservation	0	218	0	0	0	0	0	0	0	0	0	0	0	0	0	0	218
Franchise/use	0	0	0	0	0	0	0	0	2,965	2,477	0	0		26	0	0	5,448
Sales/Use	7,047	0	0	0	0	6	58	18	886	678	0	0	0	219	108	0	8,940
Property	4,393	2,165	230	27	3,671	500	0	0	6,954	5,868	0	170	0	1,060	91	15	25,124
Unemployment	0	0	0	0	0	3	17	2	67	57	0	0	0	55	11	1	213
Regulatory	0	0	0	0	0	0	0	0	347	292	0	0	0	0	0	0	639
Income	0	0	0	0	0	191	0	70	0	0	0	0	0	153	140	9	563
NG Processors	0	0	0	0	0	0	311	0	0	0	0	0	0	0	0	0	311
Transac priv	0	0	0	0	0	313	0	0	0	0	0	0	0	0	0	0	313
Miscellaneous	0	25	0	0	0	25	0	0	78	66	0	0	0	28	0	0	222
TOTAL/STATE	$11,440	$29,054	$340	$83	$8,707	$1,038	$2,152	$90	$11,297	$9,438	$0	$170	$0	$1,541	$350	$25	$75,613
GRAND TOTAL	$14,495	$43,010	$640	$158	$15,841	$1,710	$2,559	$163	$11,297	$9,438	$0	$170	$274	$1,689	$571	$25	$102,328

EXPLANATION:

1. Navajo taxes:

PIT: Actual 1-1-89 Assessments;

BAT: Total of actual tax amounts reported and paid for the last four quarters through September 30, 1989;

SEV: Total of actual tax amounts reported and paid for the last twelve months through November 15, 1989;
Sev taxes paid by El Paso Natural Gas are included under Oil & gas category;

2. State & local taxes

Coal Mines: Reported taxes for CY 1988;

Oil & gas: Reported taxes for CY 1988 (CY 1989 in the case of Phillips Pet.);

2. State & local taxes contd.

Pipelines: Estimated taxes attributable to Navajo Nation (based on the Economic Data Base Questionnaires). Tax amounts shown above are for CY 1987;
Fourcorners, Texas-New Mexico, Cinisa did not file the questionnaires;

Power plants: Property taxes are actual assessments for 1989 while, other taxes are estimated for CY 1988;

Electric transmission/distribution lines: Reported taxes for CY 1987 from the Economic Data Base questionnaires(for Continental Divide only). APS, TEP, PNM and Plains did not file the questionnaires relating to their trans/dist property. UP&L filed the questionnaire however, their state and local taxes attributable to Navajo Nation could not be calculated due to lack of appropriate formula(s). Consequently, UP&L's tax data is not inluded in this schedule;

Telephone/cable TV: Reported tax amounts for Navajo Communications & NCC Systems only (CY 1987).

See Schedule I for summary
JW/taxe:1

TESTIMONY OF THE WIND RIVER TAX COMMISSION
OF THE SHOSHONE AND ARAPAHO TRIBES
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

May 1, 1990

INTRODUCTION

Mr. Chairman and Members of the Committee, my name is Richard L. Ortiz. I am the Director of the Wind River Tax Commission, a tribal agency established by the Joint Business Council of the Shoshone and Arapaho Tribes of the Wind River Indian Reservation in Wyoming. I am accompanied by Wesley Martel and Orville St. Clair, members of the Tax Commission. On behalf of the Joint Business Council and the Wind River Tax Commission, I would like to thank you for the opportunity to appear. I am here to testify concerning the Cotton Petroleum decision and how it has adversely affected the Tribes' ability to raise needed revenues to meet the needs of their citizens.

The Wind River Reservation covers approximately 2,200,000 square acres in north-central Wyoming. The population of the Reservation is approximately 7800, comprised mostly of Shoshone and Arapaho tribal members. The average family annual income is approximately $6,277.00. Of the total population, seventy-five percent (75%) of all families are at or below the poverty level. The unemployment rate on the Reservation is above seventy percent (70%). (See Addendum 1, WINDS Survey)

A basic problem that prevents economic development on the Reservation is a lack of infrastructure and basic services. We lack basic transportation facilities, road maintenance, medical care, solid waste management systems, police protection, and housing. Due in part to this lack of services, a number of social problems prevail. Thirty percent (30%) of the population is affected by substance abuse. Only thirty-eight (38%) of tribal members have a high school diploma, and college attainment levels are inadequate to sustain an effective work force.

Despite these socio-economic problems, the Tribes have a number of assets. Those assets consist of a large work force; natural resources such as water, oil and gas, coal, and timber; and a concerned tribal government, dedicated to the development and protection of tribal resources. With the proper incentives to induce economic development, there is no doubt in the minds of the tribal leaders that we can pull out of the vicious cycle of poverty.

THE WIND RIVER TAX PROGRAM

In order to raise revenues and provide services to residents of the Reservation, the Joint Business Council enacted Ordinance 39, effective April 2, 1979. The Ordinance imposed a one-half of one percent (.5%) privilege of doing business tax on the market value of oil and gas produced, saved, and/or sold or transported from within the exterior boundaries of the Reservation. The Joint Business Council amended Ordinance 39 on March

10, 1982, to increase the tax rate from one-half of one percent (.5%) to four percent (4.0%). The oil companies on the reservation did not willingly pay the taxes. Several of the major oil companies filed suit against the Tribes to challenge their authority to impose the taxes. While the case was pending, the United States District Court ordered the taxpayers of the Wind River Indian Reservation to pay taxes into an escrow account controlled by the Court. While the Tribes ultimately prevailed in the litigation, no revenues reached the Tribes until June of 1986. Since the release of the escrowed funds, the Wind River Tax Commission has collected $32,971,199.00 in taxes. These funds have been used by the Shoshone and Arapaho Tribes for essential government services and for economic development on the Reservation.

On June 19, 1987, the Joint Business Council again amended Ordinance 39. The Tribes had realized that they needed more tax revenues to provide needed services and that the administration of their tax program required greater attention. After prevailing in the litigation against the taxpayers, the Tribes began to consider ways to accomplish an increase in revenues. It was clear to us that the State of Wyoming and its subdivisions were collecting far more in tax revenues from mineral production on the Reservation than were the Tribes, and we used the June, 1987 amendment to establish our claim to the taxes being collected by the state. The amendment created the Wind River Tax Commission and increased the tax rate from four percent (4.0%), to four percent plus the amounts taxpayers paid to the State of Wyoming and its subdivisions. The State of Wyoming imposes, on average, a six percent (6.0%) severance tax, a seven percent (7.0%) ad valorem tax, and a one-half of one percent (.5%) conservation tax on Reservation oil and gas production. Thus, the total tribal tax rate rose to seventeen and one-half percent (17.5%). Combining the state and tribal taxes, the total tax burden became thirty-one percent (31.0%) on the Reservation, as compared to an off-reservation tax burden of thirteen and one-half percent (13.5%).

The Joint Business Council realized that, because of the increased tribal tax rate and the uncertainties as to the legality of the state taxes, companies producing on the Reservation might shut in wells, or worse, leave the Reservation entirely. Therefore, the Joint Business Council decided to give the taxpayers a credit for amounts paid to Wyoming. Thus, in reality, they were collecting only four percent (4.0%). The credit was to be issued to the taxpayers unless and until such time as amounts were found by a court of competent jurisdiction to have been collected unlawfully by the state; upon such a finding, the amount paid to the state would be due and owing the Tribes. Since the June, 1987 amendment to Ordinance 39, the Wind River Tax Commission has tracked amounts paid to Wyoming and has issued credits to taxpayers totaling $10,367,079.00.

The Commission then began exploring alternative means to defeat the state taxes on mineral production on tribal lands. In order to assess the economic impact of the state taxes, the Tribes hired National Economic Research Associates of White Plains, New York to conduct an analysis of the revenues derived by the State of Wyoming and its subdivisions from taxation of Reservation production and to compare those figures to the services the state provides to the Reservation. The study was for the period of January 1, 1968 through December 31, 1987. The study shows that Wyoming collected $185 million in tax revenues from the Reservation, but provided services amounting to only $112 million. Wyoming took nearly $73 million more in taxes from the Reservation than it provided in services to the Reservation. This draining of revenues undoubtedly has helped depress the economy of the Reservation and Fremont County, where the Reservation lies. (See Addendum 2, NERA Report)

NEGOTIATIONS WITH THE STATE OF WYOMING

In February, 1988, the Wyoming Supreme Court issued its decision in the long-pending adjudication of the Tribes' right to water from the Big Horn River. The court essentially upheld the lower court's award of the right to divert nearly 500,000 acre-feet annually. While an appeal to the United States Supreme Court was pending, the Tribes and the State of Wyoming began negotiations on tax and water issues. Wyoming and the Tribes entered into a one-year interim agreement with the Tribes on February 17, 1989. Pursuant to the Interim Settlement, the state reduced its severance taxes and the Tribes increased their tax rates by a corresponding amount. Section Nine of the Agreement called for the State and Tribes to negotiate in good faith to reach a long term settlement on the tax and water issues on the reservation. Shortly after the execution of the Interim Settlement, the United States Supreme Court issued its decision in Cotton Petroleum v. New Mexico. When the Tribes and the state resumed prior to the expiration of the Interim Settlement earlier this year, it became clear that Wyoming, after the decision in Cotton Petroleum, had no desire to negotiate taxes. Due in large part to the state's refusal to negotiate on taxes, negotiations on a second Interim Settlement to cover the 1990 irrigation season collapsed. Clearly, the Cotton Petroleum decision was a key factor in the State of Wyoming's refusal to negotiate in good faith on the issue. (See Addendum 3, Tribal/State Settlement)

THE IMPACT OF COTTON ON TRIBAL POLICY

On November 9, 1989, the Joint Business Council decided to notify taxpayers that it intended to revoke the credit for amounts paid to Wyoming. The notice invited testimony concerning the economic impacts of the removal of the credit on current operations and future development activities planned for the Reservation. (See Addendum 4, NTT 010)

WRTC held a public hearing on Thursday, April 12, 1990. The testimony indicated that the Tribes' ability to increase its tax rate is severely limited. All of the producers testified that the revocation of the credit for amounts paid to Wyoming would drastically reduce the expected economic life of the fields in which they produce. Additionally, they stated that exploration activities planned for Wind River would cease immediately. Tom Brown, Inc. of Midland, Texas stated, "It is clear that dual taxation by the Tribes and State will not produce a competitive economic structure on the Reservation." Tom Brown, Inc. also said that federal legislation would be the ideal solution. Additionally, in an exhibit provided to the Commission, Tom Brown, Inc. showed that the Wind River Indian Reservation has the highest effective burden of the various areas in which Tom Brown, Inc. produces. (See Addendum 5. A) Similarly, Texaco, Inc. stated, "In light of the Cotton Petroleum case, investment in oil and gas properties on the reservation is less attractive than similar investment off the reservation because of the extra burden of tribal taxes in addition to state and local taxes." (See Addendum 5. D) The evidence provided by the producers to the Commission indicates that other economic problems will occur as well. For example, there will be less contract work available to tribal and individual tribal member sub-contractors that perform much of the field work. Rocky Mountain Oil & Gas Association Tax and Royalty Division Director Ken Monroe stated, "It is certain that contract work to tribally-owned companies will drop substantially because of the reduction of profitable wellwork." Conoco, Inc. concurred, saying "Contract work to tribal owned companies will drop by an estimated amount of 34% because of the reduction of profitable wellwork. This translates to a decrease of $56,000.00 of income to tribal members in 1990." (See Addendum 5. A&C)

Pioneer Oil & Gas, an independent operator on the reservation, which produces mostly on a margin stated, "Taxing at that high of a rate would not benefit the Tribe whatsoever since it would wipe out any future development and cause many stripper wells to be plugged and abandoned." Pioneer said "The members of the Tribe would also have more job opportunities due to expanded exploration activities that would decrease the demand for services on the Tribes." (See Addendum 5. I)

The most serious repercussion the Tribes would face by removing the credit would be the immediate reduction of the royalty income and tax revenues that the Tribes rely on to provide income and services to their citizens. Atlantic Richfield Company stated, "Our studies indicate that, given the proposed rate, production from the Phosphoria Reservoir would be shut in immediately. We also estimate that the life of the Fort Union Reservoir would be cut in half from an estimated 10 years to a remaining life of 5 years. Wells in the Frontier Reservoir would be shut in earlier than projected leaving approximately 1 billion cubic feet of natural gas uneconomical to produce." Conoco has plans for tertiary recovery in the Circle Ridge field. Conoco estimates that the increase in effective tribal tax rates would prohibit this new activity and leave approximately 5,000,000 barrels of oil in the ground; lost revenue to the Tribes, based on current prices, would be $33,870,000.00. (See Addendum 5. G&D)

There is no doubt the tribal government is in dire need of the added revenues that the elimination of the credit would bring. The Joint Business Council has tried to negotiate an agreement with the State of Wyoming, but the Cotton Petroleum decision has made agreement impossible. The Joint Business Council has done what it can by establishing and implementing the Wind River Tax Commission regulations that allow for economic development incentives. However, the Tribes believe that the major part of the solution lies with the federal government. The Tribes believe that federal Indian policy enacted by the legislative branch has been contradicted by the judicial branch with its decision on Cotton Petroleum.

The federal government's goal of Indian self-determination cannot be met until tribal governments are allowed to exercise fully their sovereignty over their resources. The Cotton Petroleum decision adversely affects Tribes' authority to determine their own destiny. The dual taxation allowed by the Cotton Petroleum decision cannot be reconciled with federal Indian policy supporting tribal self-determination and economic self-sufficiency. The need for legislation to address the disincentive to reservation incentive created by dual taxation by tribes and states.

S. 1650--The Indian Employment Opportunity Act of 1989--will help the Shoshone and Arapaho Tribes and all tribes to achieve economic independence from the federal government and advance their sovereignty. By creating these credits, the federal government will help tribal governments put life in their depressed economies by inducing economic activity on reservations. Likewise, S. 1203--which would provide investment incentives on reservations for existing as well as new businesses--would be beneficial. We are concerned that the incentives contained in this proposed legislation, however, be set sufficiently high. The systemic obstacles to development such as lack of infrastructure are now compounded by uniquely high taxation on the Reservation resulting from state taxes in addition in addition to tribal. Incentives for development on reservations must take into account the uniquely high barriers to development on the reservations.

As we have shown, the Tribes' ability to assert their sovereignty and establish their own tax policy has been severely limited. The tribal government needs to raise additional revenues to meet the demands of its citizens, yet, if they were to do so, their taxpayers will undoubtedly shut in wells, abandon exploration, or leave the reservation entirely. In the minds of the Joint Business Council, the Cotton Petroleum decision has limited the ability of the Tribes to determine their destiny, to attain economic self-sufficiency, and to exercise their sovereignty.

These problems exist not only on Wind River, but on all reservations. The federal government should assume responsibility to alleviate these problems. The solution to the dual taxation problem lies with the federal government. Sovereignty and self-determination of Indian nations cannot be achieved without federal incentives such as those provided for in S. 1203 and S. 1650. Therefore, the Joint Business Council and the Wind River Tax Commission of the Shoshone and Arapaho Tribes strongly support the passage of legislation providing such incentives.

CHIEF
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Shoshone Tax Commissioner

Gary Collins
Arapaho Tax Commissioner

W. Patrick Goggles
Arapaho Tax Commissioner

ADDENDUM TO TESTIMONY OF THE WIND RIVER TAX COMMISSION OF THE SHOSHONE AND ARAPAHO TRIBES WIND RIVER INDIAN RESERVATION

1. "WINDS" PROJECT", Executive Summary of Final Report, Volume 1, August, 1988.

2. NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC., Preliminary Estimate of Revenues Derived By Wyoming and Fremont County From Residents and Businesses on the Wind River Reservation and Expenditures by Wyoming and Fremont County for Services to the Reservation, June 3, 1988.

3. TRIBAL/STATE INTERIM SETTLEMENT, AGREEMENT ON TAX AND WATER ISSUES, February 17, 1989.

4. NOTICE TO TAXPAYERS, NO. 010, Joint Business Council and Wind River Tax Commissioners of the Shoshone and Arapaho Tribes Intent to Discontinue Tax Credits Issued to Taxpayers for Amounts Paid to Wyoming Taxing Authorities.

5. WRITTEN TESTIMONY OF WIND RIVER INDIAN RESERVATION TAXPAYERS, CONCERNING NOTICE TO TAXPAYERS, NO. 010.

   A. Letter from Tom Brown, Inc., Dated March 30, 1990.
   B. Letter from Texaco Inc., Dated March 28, 1990.
   C. Letter from Rocky Mountain Oil and Gas Association, Dated March 29, 1990
   D. Letter from Conoco, Dated March 29, 1990.
   E. Letter from Homestead Associates, Dated March 26, 1990
   F. Letter from Nance Petroleum, Dated March 27, 1990.
   G. Letter from ARCO, Dated March 30, 1990.
   H. Letter from Chevron, Dated March 16, 1990.
   I. Letter from Pioneer Oil and Gas, Dated February 22, 1990.
   J. Letter from Eli Bebout, Dated April 10, 1990.
   K. Addendum to Tom Brown Inc.'s Letter, Dated April 12, 1990.

ADDENDUM 1

"W.I.N.D.S." PROJECT

WIND RIVER INDIAN NEEDS DETERMINATION SURVEY

CHIEF WASHAKIE

CHIEF BLACK COAL

EXECUTIVE SUMMARY
OF
FINAL REPORT, VOL. I
AUGUST, 1988

"WINDS" Project

(Wind River Indian Needs Determination Survey)

EXECUTIVE SUMMARY OF FINAL REPORT, Vol. 1

Goals

The goals were to assess human resources services on the Wind River Reservation, to determine the true level of services, and to make recommendations, if necessary, to improve the level and quality of services.

Components

(1) "General Population" survey consisting of personal, face-to-face interviews with heads of households.

(2) "Key Person/Agency" surveys consisting of interviews with key personnel of public and private agencies both on and off the Reservation. (Results of this component will be released as "WINDS" Final Report, Vol. 2).

Methodology

Households were identified using the County Rural Addressing System. This is the same system that will be used for the 1990 census.

Thirty people were selected and trained as interviewers. These comprised fifteen Arapahoe and fifteen Shoshone.

The instrument used was field tested for three days before implementation.

Random verifications of interviews were conducted periodically.

Stringent measures were taken to ensure confidentiality and anonymity.

Authority

Authority was delegated by the Joint Business Council through a resolution establishing the "WINDS" Needs Assessment Task Force.

Funding

Funding for the project was provided by the State Department of Health and Social Services, Division of Community Programs; Arapahoe Business Council; Shoshone Business Council; and the Bureau of Indian Affairs.

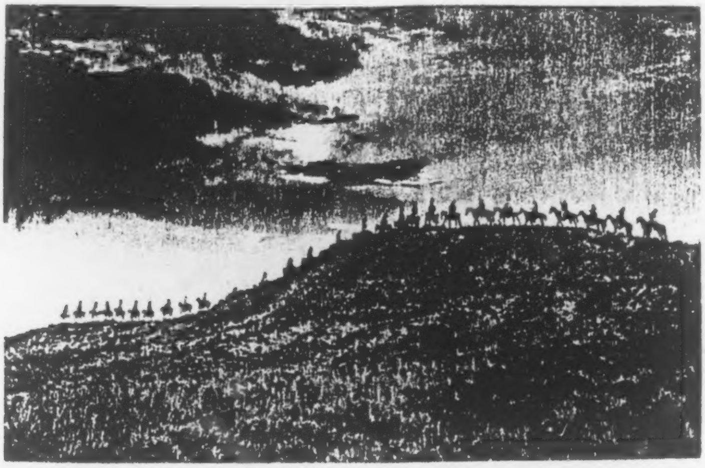
Survey Response

A total of 1,599 personal contacts were made, resulting in 1,532 completed questionnaires, a truly phenomenal response rate of 96%. During the project planning phase it was hoped that a response rate of 50% would be achieved. However, it was anticipated that a rate of 35-40% would probably be more realistic. The ultimate response rate of 96% is almost unheard of in most any voluntary survey. Quite obviously, we were extremely pleased with this response. Theories as to why we were so fortunate as to have such an incredible response are outlined in the full report, which accompanies this Executive Summary.

The average age of respondents was 41, of which 81% were heads of their families. Male respondents represented 49.8% and females 50.2%. Descent of respondents was as follows: Arapahoe, 46.6%; Shoshone, 31.1%; Other Indian tribes, 8.6%; non-Indians, 13.7%.

Categorization of Data

Survey results were presented as Reservation-wide, or aggregate information. They were also compiled and analyzed by Reservation area; Arapahoe, Burris, Crowheart, Ethete, Fort Washakie, and Riverton: and by descent; Arapahoe, Shoshone, other Indian (not Arapahoe or Shoshone), and non-Indian.



Demographic/Income Information (Sections 1, 2 and 3)

Of the six Reservation areas, 90% of the population live in the three areas of Arapahoe, Ethete and Fort Washakie. Males comprise 48.6% and females 51.4%.

Population by descent is: Arapahoe, 45.0%; Shoshone, 26.0%; other Indian tribe, 12.0%; and Non-Indian, 12.1%; plus 4.9% whose descent was undetermined by the survey. The percentage of Arapahoe to Shoshone is: Arapahoe, 63.4% and Shoshone, 36.6%.

Multi-family households constituted 35% of the total households.

Families with no income during the past year constituted 46% of the total families. Of the total families, 73% had incomes ranging from $0-$10,000 and

90% were in the income range of $0-$20,000. The average family annual income was $6,277.

Average family income by Reservation area was: Arapahoe, $5,856; Burris, $5,191; Crowheart, $8,751; Ethete, $6,968; Fort Washakie, $6,144; Riverton, $2,843.

Average family income by descent was: Arapahoe, $4,972; Shoshone, $5,778; Other Indian tribe, $6,357; Non-Indian, $12,556.

Of all families, 75% were classified as "low-income" or "poverty" families, based upon the federal OMB (Office of Management and Budget) guidelines. The percent of low-income families with no income was 61%. The percent of low-income families not receiving per capita payments was 16%. The percent of low-income families with no income and not receiving per capita payments was 10%.

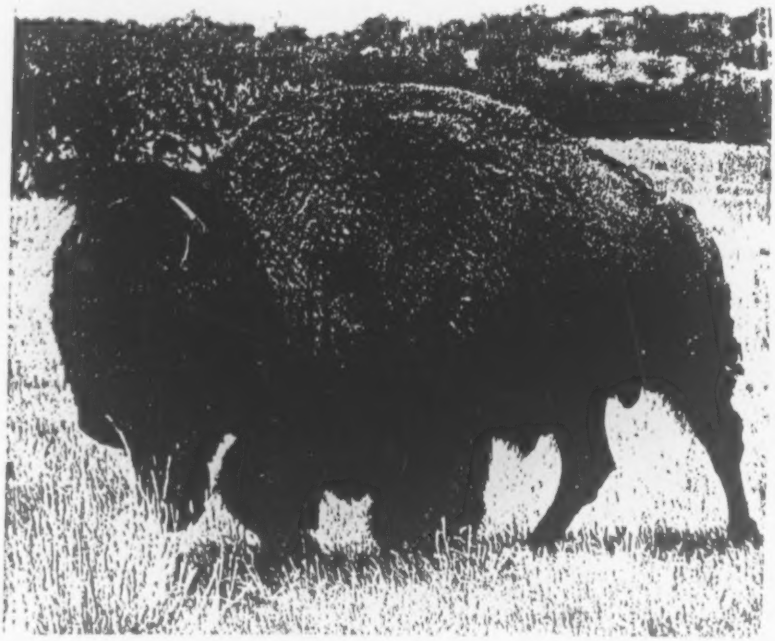
The three areas of Arapahoe, Ethete, and Fort Washakie comprised 90% of the low-income families.

Basic Needs (Section 4)

Some of the more serious problems as seen by respondents were: 82% had problems during the past year with basic transportation services, i.e., getting to the health clinic, to the tribal offices, shopping, etc. Sixty-four percent (64%) had problems with road maintenance during the past year. Some of the other problems relating to basic needs were: 38% had problems getting food; 42% with getting adequate clothing; 34% with getting adequate medical care; 49% had trouble paying utility bills; 34% had problems with their home solid waste system; 39% had problems with receiving Reservation law enforcement services; and 24% had problems regarding their personal housing situation. Conversely, only 11% said that preschool day care was a problem for them, and only 10% said that after school day care was a problem.

Seventy-nine percent (79%) thought that there was a strong need for short-term care for abandoned, neglected, or abused youths or children, and 79% thought that there was a strong need for long-term residential care for youths and children.

Of those interviewed, 94% did not have any garbage pickup. Of those not having garbage pickup, 77% hauled their garbage around five miles, and 6% hauled it over twenty miles. The average hauling distance was five miles. This issue, obviously relates to health hazards. Small land-fills and informal dumping areas, even when used with appropriate controls, can lead to more serious health hazards. For example, both domestic and wild small animals frequently feed from the animal carcasses and general refuse. Consequently, the refuse becomes scattered around the Reservation. Further, the infamous Wyoming wind tends to blow refuse over the surrounding area.



Employment (Section 5)

The overall Reservation unemployment rate was 71%. It should be noted that this survey was conducted during the prime employment months and, obviously, the rate would be much higher in other months.

The unemployment rate for each descent was: Arapahoe, 70%; Shoshone, 71%; other Indian tribe, 78%; and non-Indian, 52%.

Indian people employed by Wyoming State Government as of November 30, 1987, constituted thirty-seven full time positions, and four part-time positions.

Only about three of these positions are "professional" - the majority being in the area of laundry workers, food services, janitorial, maintenance and homemaker. Of the thirty-seven full time jobs, twenty-five were at the Wyoming State Training School in Lander. There were only six other Indian people employed in the towns of Lander and Riverton, both close to the Reservation.

The average hourly wage for those currently working was $6.96. The average hourly wage for all Fremont County workers was $8.66. Fourteen percent (14%) of those working were classified as "underemployed", or earning less than the minimum wage. The average length of time on their current job was 6.5 years.

For those persons that were unemployed, their average hourly wage on their last job was $5.15 per hour, and 15% had been earning less than the minimum wage. The average length of their last job was 3 years. The average length of unemployment since their last job was 4.1 years. Of those that were unemployed, 75% were employed in Fremont County on their last job.

Of those interviewed, 68% would like vocational job training. Further, 26% were formally trained but were unable to find a job in that same occupation. Seventeen percent (17%) were working in an occupation for which they had been formally trained.

Of those interviewed, 51% said that they would leave the Reservation for employment. Of those, 5% said that they would relocate within Fremont County, 5% would move anywhere within Wyoming, and 82% would relocate anywhere for a job. Eight percent (8%) had no preference for relocation.

Housing (Section 6)

Some of the more serious problems regarding personal housing situations were: 45% needed replacement of doors; 52% needed more insulation; 56% needed storm windows; 43% needed window replacement; 29% stated that their heat was not adequate in cold weather; 4% did not have electricity; 31% had water that tasted bad; 10% did not have hot and cold running water; 37% had problems with floors and walls pulling apart; 24% had roofs that leaked; 45% needed either replacement of doors or repair of door jambs to prevent cold drafts; 21% had sub-standard bathrooms (standard is defined as having a stool, tub or shower, and a wash basin that all work properly); and 16% had septic or sewer systems that did not work.

Of the nineteen possible housing problems listed in the questionnaire, 9% had only one problem; 47% had at least five problems; and 24% had ten or more problems with their housing situation.

Of all respondents, 23% currently lived with relatives or friends.

Of those interviewed, 33% heated their homes with Propane, 25% with wood or coal, 22% with natural gas, and 18% with electric heat. Two percent (2%) did not have any kind of heat.

Transportation (Section 7)

Of those interviewed, 82% said that the lack of transportation was a serious problem at Wind River. Further, 86% felt that a Reservation-wide transportation system was needed. Of eleven suggestions relating to transportation systems, 90% felt that a simple, Reservation-wide bus system would be the most pragmatic and beneficial. Three percent (3%) replied that their children were unable to attend school because of the lack of transportation.

Education (Section 8)

Of those interviewed, 37% had attained a high school education. Further, 4% had completed at least four years of college.

The dropout rate for Wyoming Indian High School at Ethete was 10.8%. The overall Wyoming dropout rate for high-schoolers was 3.3%. The Fremont County dropout rate was 3%.

Of those interviewed, 9% of their family members needed special classes, such as in developmental disabilities, but were not receiving them. Five percent (5%) of their family members were currently in special classes.

Recreation (Section 9)

Seventy-eight percent (78%) thought that there were not enough recreation programs for young children, 83% thought that there were not enough for teenagers, and 69% felt that there were not enough for adults.

Ninety-eight percent (98%) stated that recreation programs are very important. When asked why, the primary responses were: 36% said "to keep people out of trouble"; 28% said "something to do"; 8% said "for good health"; 7% said "an opportunity to socialize"; and 10% said that "it discourages substance abuse."

Of those interviewed, 91% thought that there should be bike paths built alongside roadways, as children and youths riding bikes on main roads sometimes put themselves and others in hazardous situations.

Health and Medical (Section 10)

The question was asked, "Do you receive adequate health care from Indian Health Service?" Forty-nine percent (49%) said No. Thirty-eight percent (38%) stated that they were unable to contact a doctor after normal working hours. Fifty-three percent (53%) stated that adult dental services through Indian Health Service were adequate, and 49% stated that children's dental services were adequate. Six percent (6%) needed home nursing services and were not receiving them. Thirty-two percent (32%) needed assistance with nutritional services and 17% needed dietary assistance.

Of those with health coverage, 37% used Indian Health Services, 37% had private health coverage and used local doctors in Lander and Riverton. Fifteen percent (15%) were on Medicare. Forty percent (40%) of those interviewed did not have any kind of health coverage.

Twenty percent (20%) currently had serious health problems. Of these problems, 29% constituted alcohol abuse, 13% drug abuse, 20% diabetes, 10% heart conditions, along with other conditions.

Concerning alcohol and drug use at Wind River, the question was posed "Is alcohol use or drug use (separate questions) at Wind River: i) no problem, ii) minor problem, iii) serious or very serious problem?"

Alcohol use: 94.5% believed that it was a very serious problem at Wind River; 4.1% said it was a minor problem, and 1.4% said it was no problem.

Drug use: 85.6% said it was a very serious problem at Wind River; 11.4% said it was a minor problem; 3% said it was no problem.

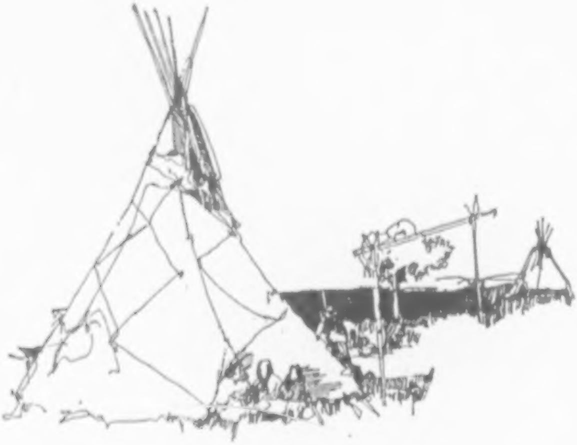
Regarding county ambulance services, 70% stated that they were adequate. However, 94% felt that a separate Reservation ambulance service was needed.

With respect to animal control, 99.7% of respondents commented that it ranged from "a problem" to "very serious problem." The comments were many and varied, but basically fell into two categories. Primary responses were as follows:

(1) Small, domestic animals: Too many running loose, need chaining or fencing or some kind of control; many are sick and starving; too many running in the housing areas and into garbage. There should be a limit on the number of pets a family can have; many strays run in large packs and frequently chase people and livestock; animals from surrounding towns are often dumped on the Reservation. A dog pound is needed to license pets and pick up and destroy strays. A spay/neuter clinic is needed. In short, a definite health and safety hazard.

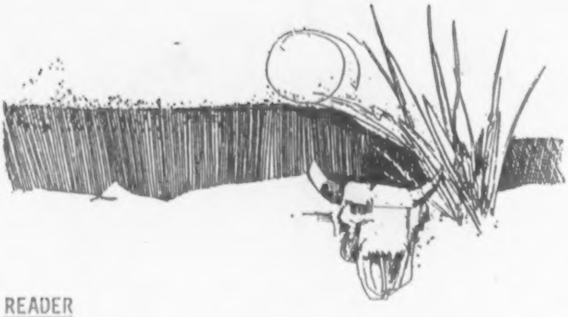
(2) Livestock: Too many on roads and in some housing areas; fencing that needs repair; dead animals frequently on road; need livestock regulations; punish owners of loose livestock; particularly need horse control; need a veterinarian. This also presents health and safety hazards.

Seventy-three point seven percent (73.7%) of the comments related to small domestic animals and 22.4% related to livestock.



General Summation

The results of this comprehensive needs assessment clearly show that the Wind River Reservation represents an area that is chronically economically depressed. It is characterized by an astoundingly high rate of unemployment, and unusually high needs for services in the areas of health, alcohol and drug abuse, education, quality of housing, economic development, sanitation, and related areas.



NOTE TO THE READER

The reader of this executive summary is strongly encouraged to read the full report of the "WINDS" project, as the executive summary is merely brief highlights of the project results. The full report should enable the reader to obtain a more comprehensive perspective of Wind River. The primary intent of the project was to determine the quality of services to the Wind River population and, ultimately, to improve the quality of life. The report clearly confirms and illustrates many of the problems and causes of distress on the Wind River Reservation.

Addendum 2

Preliminary Estimate of Revenues Derived By
Wyoming and Fremont County From Residents
and Businesses on the Wind River Reservation
and Expenditures by Wyoming and Fremont County
For Services to the Reservation (1

	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978
State and County Revenues (2											
Severance Tax (3	0	171,323	173,571	169,635	181,658	207,146	192,992	564,925	1,066,227	999,499	950,693
Ad Valorem											
Oil & Gas (4	897,045	1,058,071	1,120,077	1,087,129	1,174,490	1,391,531	1,286,366	1,362,785	1,897,572	1,826,082	1,754,314
Other (5											
Districts 14,21,38	97,543	104,334	103,813	110,913	115,988	121,993	126,553	138,520	151,183	184,530	232,679
Parts of Districts 6,24,25	676,649	723,760	720,142	769,398	804,602	846,254	877,887	960,908	1,048,748	1,280,076	1,614,083
Subtotal	1,671,237	1,886,165	1,944,032	1,967,440	2,095,080	2,359,777	2,290,805	2,462,213	3,097,503	3,290,688	3,601,077
Sales Tax (6	725,647	772,245	821,504	897,527	971,453	1,068,755	1,205,220	1,397,454	1,790,678	2,156,075	2,621,478
Interest Earned on PWMTF (7	0	0	0	0	0	0	0	0	14,647	87,994	100,479
Total Revenues	2,396,884	2,829,733	2,939,107	3,034,603	3,248,191	3,635,678	3,689,019	4,424,593	5,969,055	6,534,256	7,273,726
State and County Expenditures (8											
Schools (9											
Districts 14,21,38	503,081	538,697	581,733	621,802	658,902	709,358	783,559	810,806	1,046,598	1,125,040	1,314,271
Districts 1,2,6,9,24,25	416,039	445,493	481,083	514,219	544,901	586,627	647,990	769,446	922,433	978,289	1,141,778
Subtotal	919,119	984,190	1,062,817	1,136,021	1,203,802	1,295,986	1,431,549	1,580,252	1,969,031	2,103,329	2,456,049
Highways											
State (10	176,884	176,884	261,566	176,884	176,884	176,884	418,295	176,884	258,597	561,144	223,476
Local (11	22472	24,062	25,985	27,775	29,432	31,685	35,000	38,513	41,098	43,816	73,087
Subtotal	199,356	200,947	287,551	204,659	206,316	208,570	453,295	215,398	299,695	604,960	296,563
Community Services (12	96,722	103,569	111,843	119,547	126,680	136,380	150,646	165,768	176,895	188,593	202,858
Local Services (13											
Administration	74,658	79,944	86,330	92,277	97,782	105,270	116,292	127,954	136,543	145,572	144,545
Justice	63,358	67,844	73,264	78,310	82,983	89,337	98,682	108,586	115,877	123,539	134,562
Social Services	5,990	6,414	6,926	7,403	7,845	8,446	9,329	10,266	10,955	11,679	24,130
Overhead	53,736	57,540	62,137	66,417	70,380	75,769	83,695	92,096	98,278	104,777	91,703
Weed and Pest	35,622	38,358	41,422	44,275	46,917	50,510	55,793	61,394	65,515	69,847	74,912
Other Funds	234,745	251,365	271,446	290,143	307,454	330,998	365,621	402,322	429,328	457,719	492,342
Subtotal	468,309	501,464	541,526	578,825	613,361	660,330	729,402	802,618	856,494	913,134	962,195
Total Expenses	1,683,506	1,790,170	2,003,736	2,039,051	2,150,159	2,301,265	2,764,892	2,764,035	3,302,115	3,810,016	3,917,665
Revenues - Expenses	713,378	1,039,563	935,371	995,552	1,098,032	1,334,413	984,128	1,660,557	2,666,940	2,724,240	3,356,061
Interest Rate (14	4.51%	5.81%	6.51%	5.70%	5.27%	5.18%	6.09%	6.89%	3.63%	9.11%	6.74%
Cumulative Worth w/Interest (15	713,378	1,794,389	2,846,374	4,004,320	5,213,443	6,923,092	8,268,836	10,499,116	13,532,259	17,401,637	21,829,478

Preliminary Estimate of Revenues Derived By
Wyoming and Fremont County From Residents
and Businesses on the Wind River Reservation
and Expenditures by Wyoming and Fremont County
For Services to the Reservation (1

	1979	1980	1981	1982	1983	1984	1985	1986	1987	Total
State and County Revenues (2	-----	-----	-----	-----	-----	-----	-----	-----	-----	------
Severance Tax (3	1,094,700	1,264,621	1,837,189	8,492,358	7,972,669	6,998,278	5,391,827	5,240,870	3,343,460	46,142,340
Ad Valorem										
Oil & Gas (4	2,024,317	2,296,980	3,313,305	6,126,448	9,135,740	9,666,202	8,747,522	6,904,460	6,697,189	67,812,510
Other (5										
Districts 14,21,38	196,128	226,775	251,347	282,945	258,695	292,371	299,874	282,890	262,323	3,639,521
Parts of Districts 6,24,25	1,359,901	1,572,403	1,742,779	1,961,870	1,793,729	2,027,228	2,079,250	1,961,489	1,818,881	25,239,629
Subtotal	3,580,346	4,096,158	5,307,432	8,371,263	11,188,165	11,985,801	11,126,646	9,148,839	8,778,393	96,691,659
Sales Tax (6	3,253,470	3,041,723	2,928,994	2,717,756	2,086,425	1,812,930	1,798,679	1,586,161	1,386,843	33,543,126
Interest Earned on PWMTF (7	170,327	267,374	379,132	525,420	1,037,741	1,223,771	1,468,614	1,503,631	1,503,596	8,302,724
Total Revenues	8,098,844	8,669,877	10,452,747	20,106,798	22,285,019	22,070,779	19,805,765	17,479,501	15,012,291	184,679,849 ✓
State and County Expenditures (8-										
Schools (9										
Districts 14,21,38	1,342,908	1,737,736	1,898,967	3,059,960	2,991,460	4,881,341	5,396,693	6,595,349	6,760,314	42,316,796
Districts 1,2,6,9,24,25	1,381,407	1,600,514	1,769,114	1,909,293	2,478,438	3,353,365	3,204,773	3,359,856	3,309,024	28,952,549
Subtotal	2,724,314	3,338,250	3,668,081	4,969,253	5,469,897	8,234,706	8,601,467	9,955,205	10,069,338	71,269,345
Highways										
State (10	597,943	541,571	596,160	1,544,845	710,666	871,797	2,201,325	1,110,454	1,394,092	11,999,458
Local (11	166,656	226,441	247,180	256,601	251,849	337,156	364,793	340,502	218,632	2,756,171
Subtotal	764,599	768,011	843,340	1,801,445	962,514	1,208,953	2,566,118	1,450,956	1,612,634	14,755,628
Community Services (12	221,689	245,941	266,484	285,314	298,724	313,560	329,253	340,380	355,797	4,036,342
Local Services (13										
Administration	214,440	208,590	224,931	237,015	246,029	262,301	299,496	346,654	342,565	3,434,577
Justice	186,221	280,466	351,809	343,786	386,221	525,924	574,342	589,532	447,021	4,590,462
Social Services	36,501	39,961	39,700	57,877	74,464	66,678	78,558	80,535	68,371	639,624
Overhead	217,535	219,446	208,908	232,041	269,815	321,171	388,325	322,003	372,837	3,297,333
Weed and Pest	61,959	90,930	98,585	106,707	103,369	121,059	126,738	127,587	306,433	1,673,551
Other Funds	538,045	513,039	504,830	498,205	507,059	633,257	629,038	802,921	552,437	8,521,203
Subtotal	1,274,701	1,352,432	1,428,762	1,475,232	1,581,957	1,930,391	2,096,497	2,269,232	2,089,664	22,156,750
Total Expenses	4,985,303	5,704,634	6,206,667	8,531,245	8,313,093	11,687,610	13,593,335	14,015,772	14,127,473	112,216,065 ✓
Revenues - Expenses	3,113,541	2,965,243	4,246,080	11,575,553	13,971,927	10,333,169	6,212,431	3,463,729	884,819	72,461,784
Interest Rate (14	8.55%	10.47%	11.75%	12.54%	14.12%	11.85%	11.49%	10.03%	8.86%	
Cumulative Worth w/Interest (15	26,640,099	32,114,765	39,755,437	55,768,517	76,601,320	94,785,311	110,404,177	123,437,500	133,751,042	133,751,042

TRIBAL-STATE INTERIM SETTLEMENT AGREEMENT ON TAX AND WATER ISSUES

During the term of this Agreement, the Shoshone and Northern Arapaho Tribes (the "Tribes) of the Wind River Indian Reservation (the "Reservation") and the State of Wyoming (the "State") agree as follows:

1. Water on the Reservation is to be allocated (a) within the six (6) federal irrigation projects (Crowheart Unit, Ray Unit, Coolidge Unit, Johnstown Unit, Sub Agency Unit, Left Hand Unit) in accordance with the principle of equally shared surpluses and shortages, if any, in a manner that reflects traditional rotation practices for each such project, and (b) outside of the above projects in accordance with historical priority dates attached to the lands outside of such projects. In applying the principle of equally shared surpluses and shortages, if any, water shall be allocated to individual tracts of land based on the total amount of irrigated acreage in each tract, rather than the size or number of headgates for the particular tract.

2. The Tribes and the State, in coordination with the Bureau of Indian Affairs, shall cooperate in jointly monitoring and managing water allocations on the Reservation.

ADDENDUM 3

3. The State shall reduce its severance tax on oil and gas production on the Reservation from six percent to one and one-half percent.

4. The Tribes may amend the rate of their severance tax on oil and gas production on the Reservation. The tribal tax rate is now equal to four percent plus the current state and county rates of taxation. The amended tribal rate shall not exceed eight and one-half percent plus the then-current state and county rates of taxation.

5. The Tribes shall not seek to enjoin or otherwise hinder the collection of any remaining state or county taxes on oil and gas production on the Reservation, but the Tribes are free to participate as amici curiae in cases not involving the Reservation and as amici curiae in any refund proceedings involving taxpayers on the Reservation. The Tribes shall retain the current credit in the tribal tax on oil and gas production for state and county taxes paid by Reservation taxpayers.

6. The State shall provide $1,000,000 in grant funds for rehabilitation and expansion of existing water delivery systems within the Reservation. In consultation with the State Engineer, the Tribes shall define, develop budgets for, and prioritize the projects to be supported by these grant funds. As each such project is initiated, the

State shall disburse funds to the Tribes up to the above total amount in accordance with the budgets and priorities for the defined projects; provided, however, that the State's obligation to the Tribes under this Agreement as to any unspent funds shall terminate on March 31, 1994. The Tribes shall return to the State any funds not spent in accordance with the above budgets and priorities.

7. The Tribes, in consultation with the Bureau of Indian Affairs, shall establish a fund and procedures for compensating Indian water users for possible losses arising from the accommodations provided by the Tribes in Paragraph 1. The State shall provide $2,000,000 in cash to the Tribes for use in this compensation fund, and any amount not allocated to the fund may be expended for such other purposes as the Tribes may decide. The payment from the State shall be due within thirty days of the effective date of this paragraph of the Agreement.

8. The State shall provide $300,000 to be used to fund a reconnaissance study of potential water storage sites on the Reservation and a study of improvements needed for the rehabilitation and expansion of existing water delivery systems on the Reservation. These studies shall be conducted for the Tribes and the State by a consulting firm or other entity, and according to terms, mutually

agreed upon by the Tribes and the State. If feasible, such studies shall be completed no later than October 1, 1989. If the Tribes are able to arrange alternative funding in whole or in part for these studies, or if the cost of these studies is less than $300,000, the remaining amount committed by the State for these studies shall be added to the funds available under paragraph 6 of this Agreement for use in rehabilitating and expanding the existing water delivery systems on the Reservation.

9. The Tribes and the State shall negotiate in good faith to reach a long-term settlement of the tax and water issues on the Reservation.

10. If the Tribes and the State are able to reach a long-term agreement regarding the tax and water issues on the Reservation, the Governor shall support legislation needed to implement the terms of such agreement, including significant funding for rehabilitation of water delivery systems and pre-construction engineering studies for water storage sites. The Tribes and the State agree to cooperate in seeking federal funding to offset these costs.

11. The Tribes and the State shall create a committee by each appointing one representative to discuss

disagreements and issues arising out of this Agreement.

12. The effective dates of the terms of this Agreement are contingent upon obtaining the necessary approval of the Department of Justice and upon the enactment of implementing legislation by the State Legislature as follows: If the State Legislature has enacted implementing legislation by April 1, 1989, and the Department of Justice has not disapproved the Agreement as of that date, Paragraphs 1, 2, 3, 4, and 5 of this Agreement shall take effect on April 1, 1989, but shall cease to become effective if the approval of the Department of Justice is not obtained by May 1, 1989, unless this date is extended by written agreement of the State and the Tribes. The remaining paragraphs of this Agreement shall take effect when the State Legislature has enacted implementing legislation and the approval of the Department of Justice has been obtained; provided, however, that if such legislation is not enacted or such approval is not obtained before May 1,. 1989, this entire Agreement shall become null and void, unless extended by written agreement of the Tribes and the State.

13. The various terms of this Agreement shall remain in effect for one year from the effective date of each such term as set forth in paragraph 12, except (a) as

provided in Paragraph 6 for the disbursement of unspent water delivery system funds, and (b) as provided in Paragraph 10 for the Governor to support certain legislation if the Tribes and the State reach a long-term agreement on tax and water issues; provided, however, that if there has been a material breach of the Agreement that is not resolved or reconciled by the committee described above in Paragraph 11, this Agreement may be terminated by the non-breaching party sooner than one year from the effective date or dates.

John R Washakie
John Washakie, Chairman
Shoshone Business Council

Feb. 17, 1989
Date

Burton Hutchinson
Burton Hutchinson, Chairman
Northern Arapaho Business
Council

Feb 17, 1989
Date

Mike Sullivan
Mike Sullivan, Governor
State of Wyoming

Febr. 17, 1989
Date

CHIEF
WASHAKIE

SHOSHONE & ARAPAHO TRIBES
WIND RIVER TAX COMMISSION
BOX 830
FORT WASHAKIE, WYOMING 82514
307-332-7835 307-856-9449

CHIEF
BLACK COAL

Orville M. St. Clair
Shoshone Tax Commissioner

Wesley Martel
Shoshone Tax Commissioner

Gary Collins
Arapaho Tax Commissioner

W. Patrick Goggles
Arapaho Tax Commissioner

NOTICE TO TAXPAYERS NO. 010

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN, that the Joint Business Council and the Wind River Tax Commission of the Shoshone and Arapaho Tribes intend to discontinue the tax credits to taxpayers for amounts paid to Wyoming taxing authorities.

The Joint Business Council and the Wind River Tax Commission request and invite taxpayers to submit written testimony on the economic impacts this decision will have on oil and gas production on the Wind River Reservation, and on any other plans that may be under consideration.

Taxpayers will have until April 2, 1990 to submit written testimony concerning this **NOTICE**. In addition, the Wind River Tax Commission will hold a **PUBLIC HEARING** to receive oral testimony. A subsequent Notice will be sent to taxpayers by mid-March notifying taxpayers of the date, time, and location of public hearing.

Questions regarding this notice may be directed to Richard L. Ortiz at (307) 332-7835 or mailed to the following address:

Wind River Tax Commission
P.O. Box 830
Fort Washakie, WY 82514, for mail, or:

Wind River Tax Commission
17 N. Fork Rd.
Fort Washakie, WY 82514, for Fed Ex.

ADDENDUM 4

Tom Brown, Inc. P. O. Box 2608 Midland, Texas 79702-2608 (915) 682-9715

March 30, 1990

APR 1990
Received
Wind River Tax Dept.

Mr. Richard Ortiz
Director
Wind River Tax Commission
P.O. Box 830
Fort Washakie, Wyoming 82514

Re: Proposed Discontinuance of Tax Credits Allowed for Taxes Paid to Wyoming Taxing Authorities;
Wind River Reservation
Fremont County, Wyoming

Dear Mr. Ortiz:

Pursuant to your Notice to Taxpayers No. 011, received by this office on March 20, 1990, Tom Brown, Inc. ("TBI") wishes to submit the following comments, and wishes also to notify you that its representatives plan to attend the hearing which will be held in Fort Washakie on April 12.

TBI has been an active oil and gas producer on the reservation for approximately fifteen years. It presently operates both the Muddy Ridge and Pavillion Fields, and has several exploration and development proposals pending before the Joint Business Council. TBI has always made an effort to consult with the Tribes on important issues and decisions, and has attempted to structure and conduct its business on the reservation in a manner which is fair to both the Company and the Tribes.

As you know, the elimination of the credit for taxes paid to the state and local taxing authorities will increase the effective tax rate on production from the reservation from approximately 17.25% to approximately 23.25%. Coupled with the 25% royalty which TBI pays on much of its reservation production, the effective burden on production will be in excess of 48%.

As we have discussed with you previously, the majority of TBI's assets are located in four areas; the Wind River Basin (both on and off of the reservation), west Texas, western North Dakota, and western Arkansas. Before TBI undertakes any exploration or development project, it performs an economic analysis of the project. In performing such an economic analysis, economic burdens on the production (tax, royalty, and overriding royalty) are one of the most significant factors which is considered. Higher burdens make any such proposal less attractive, and if the burdens are sufficiently high, the project becomes uneconomic. Exhibits A-1 and A-2 to this letter are an analysis of relative royalty and tax burdens in the areas where

ADDENDUM 5 A

TBI is likely to consider spending exploration capital. Because both the royalty rate and the effective tax rate for reservation oil and gas are substantially higher than in the other areas, it will put reservation activity at a severe disadvantage in terms of TBI's future exploration and development activity. While the reservation is a favorable environment in terms of geological potential for oil and gas production, economic burdens of almost 50% will make it extremely difficult for producers to justify any further investment in exploring for and developing reservation resources. Many opportunities for investment exist in areas where the geological prospects are just as favorable as those on the reservation, and where the economic burdens are much lower.

The higher tax rates will not only make future drilling activities much less likely, but also have a negative effect on the life of presently producing wells. As the tax burden rises, the economic life of an oil or gas well becomes shorter. It will become uneconomic to operate the well much earlier in the life of the well if the burdens against that well's production are increased, and it will become necessary to plug and abandon the well at an earlier point in time. Additional pressure on the profitability of domestic oil and gas production has been created by the significant downturn in oil and gas prices which has occurred since 1986. Adding increased tax rates to an asset which is already burdened by lower prices will only further decrease the life of the asset.

It is clear to TBI that oil and gas exploration and production will be maximized by a tax and royalty structure which is competitive with other jurisdictions. It is also clear that dual taxation by the Tribes and the State will not produce a competitive economic structure on the reservation.

Two potential solutions occur to us. The first would be a negotiated settlement between the Tribes and the state and local taxing authorities. Clearly, the state and local governments provide some services on the reservation. It logically follows that some portion of the severance and ad valorem taxes should go to the state to compensate it for the services which it actually provides. Conversely, the Tribes currently provide certain services, and could assume from the state and local governments the responsibility for providing other services. The Tribes should receive that portion of the subject tax revenues which would be attributable to the services which it ultimately provides.

Another potential solution would be federal legislation overturning the *Cotton Petroleum* decision. Ideally, such legislation would provide that a state would have concurrent authority to tax only to the extent that it actually expended funds on, and provided services to, a particular reservation.

In connection with either or both of these suggestions, TBI would be willing to give financial assistance, and assistance in lobbying or testifying before governmental agencies or legislative bodies. In order to best protect the interests of all parties to the problem, it is our recommendation that a meeting or series of meetings be scheduled among the principals, in order to discuss the problem and arrive at a solution that addresses each party's concerns. We would be willing to lend every assistance to such a plan.

If you have any questions regarding our position prior to the scheduled meeting, please feel free to contact the undersigned.

Sincerely,

Donald L. Evans

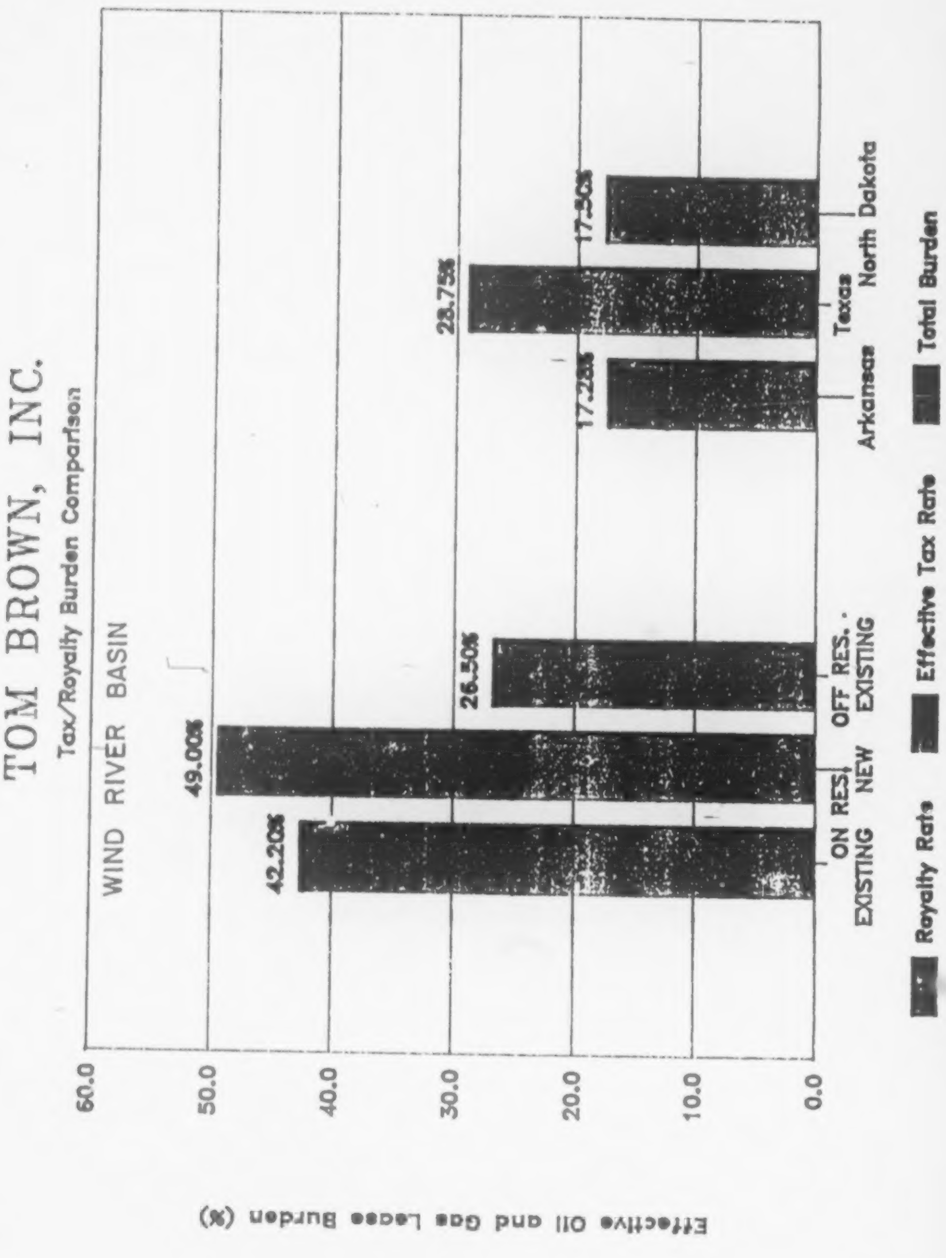
Donald L. Evans
Chairman and Chief Executive Officer

Exhibit A-1
to
Letter dated March 28, 1990
from Tom Brown, Inc.
to the
Wind River Tax Commission

Effective Oil and Gas Lease Burdens

Area	Royalty Rate	Effective Tax Rate	Effective Burden
Wind River Basin			
Outside Reservation	12.50%	14.00%	26.50%
On Reservation	25.00%	24.00%	49.00%
Arkansas	12.50%	4.78%	17.28%
Texas	20.00%	8.75%	28.75%
North Dakota	12.50%	5.00%	17.50%

EXHIBIT A-2


TOM BROWN, INC.
Tax/Royalty Burden Comparison
WIND RIVER BASIN
Effective Oil and Gas Lease Burden (%)
60.0
50.0
40.0
30.0
20.0
10.0
0.0
42.20%
49.00%
26.50%
17.23%
28.75%
17.50%
ON RES. EXISTING
NEW
OFF RES. EXISTING
Arkansas
Texas
North Dakota
Royalty Rate
Effective Tax Rate
Total Burden

Thomas E Edwards
Senior Tax Attorney
Tax Department
Los Angeles Division

Texaco Inc

10 Universal City Plaza
P O Box [illegible]
Universal City, CA [illegible]
[illegible]

APR 1990
Received
Wind River Tax Dept.

March 28, 1990

Mr. Richard L. Ortiz
Director
Wind River Tax Commission
P.O. Box 830
Fort Washakie, WY 82514

Dear Mr. Ortiz:

Notice to Taxpayers No. 010 gave taxpayers until April 2, 1990 to submit written testimony with respect to the intent of the Joint Business Council and the Wind River Tax Commissioners to discontinue the tax credits to taxpayers for amounts paid to Wyoming taxing authorities. Texaco is a producer of oil and gas on the Wind River Reservation and will be directly affected by any tax rate changes. The purpose of this letter is to present Texaco's comments on the adverse impact of the tax rate increase on reservation activities.

Texaco has extensive worldwide experience in oil and gas exploration and production as well as transportation, refining, and marketing activities. This experience and our knowledge of oil patch economics and practices serve as the basis for the following comments.

- The petroleum industry and the Shoshone and Arapaho Tribes are essentially partners on the Wind River Reservation. Industry provides a substantial tax base upon which tribal government can raise the tax revenues needed to achieve meaningful and lasting economic development, opportunity, and employment. In addition the industry provides a royalty and opportunity for employment. However, in light of the Cotton Petroleum case investment in oil and gas properties on the reservation is less attractive than similar investment off the reservation because of the extra burden of tribal taxes in addition to state and local taxes. The disallowance of tax credits for amounts paid to Wyoming taxing authorities will make reservation investment even less appealing because the overall tax burden will increase from about 17.5% to 31%. This tax increase will effectively discourage future investment by making competing alternatives off the reservation far more profitable. The Joint Business Council's dramatic severance tax hike coupled with an apparently uncertain tax policy do not promote the partnership atmosphere needed for the mutual benefit of both parties.

- Exploration for oil and gas is a very risky, speculative, and expensive activity. The petroleum industry needs a tax structure which will enhance the economics of domestic exploration and production as well as provide some cushion against the price volatility experienced in recent years. In an era of limited exploration budgets competing prospects are closely evaluated. The already burdensome "multiple taxation" of reservation leases makes exploration opportunities on the reservation less competitive than those off the reservation. The planned 13.5% tax rate boost in conjunction with increased royalty rates approaching 30% will act as a disincentive to future oil and gas exploration on the reservation.

- Exploration and production activities stimulate general business development on the reservation and provide employment opportunities for tribal members. Typically, oil and gas is produced so long as it is economically viable consistent with prudent engineering principles. Tax rate hikes negatively impact the economics of producing properties by increasing overall operating expenses; and as expenses increase the economic life of properties tends to decrease. Unfortunately, industry employment and the flow of industry dollars into local economies will cease when properties reach the economic limit. The planned 13.5% tax rate hike will certainly cause this to happen at an earlier date than necessary.

- RMOGA members have attempted to reconcile the problem of state and local taxation of reservation activities which substantially interferes with the Tribes' ability to raise its own tax rate. It is disappointing to see the Joint Business Council continue to accept "multiple taxation", and to ignore the pursuit of economic self-determination. The unpredicable escalation of tax rates within this taxing scheme promotes an uncertain business environment which adversely impacts on tribal interests.

- Many taxing authorities including the state of Wyoming recognize the need to provide tax rate incentives to promote the continuation of production from marginal

> wells. This form of tax relief encourages maximum production of valuable tribal resources. This incentive was lost in the interim agreement between Wyoming and the Tribes which provided for the temporary 4 1/2% state severance tax rate shift to the Tribes. Unfortunately, the Joint Business Council's continuing failure to provide this tax incentive results in an inability to maximize the value of the Tribes' natural resources; producing wells do not become fully depleted, they merely reach their economic limit. The 13.5% tax rate hike will have a serious and immediate adverse affect on the continuing operation of many stripper wells.

Texaco believes that the above comments clearly demonstrate that the Tribes will be poorly served by the plan to discontinue the taxpayer tax credits for amounts paid to Wyoming taxing authorities. Texaco strongly recommends that the Joint Business Council and the Wind River Commissioners reconsider their course of action.

Thank you for the opportunity to present our comments on this matter. Mr. R. B. Bruckman of Texaco intends to make an oral presentation of our comments at the public hearing scheduled for April 12.

Very truly yours,

T. Edwar

RBB:mp
2702\3-6N

APR 1990
Received
Wind River Tax Dept.

1860 Lincoln Street, Suite 404 • Denver, Colorado 80295
303/860-0099

March 29, 1990

Mr. Richard Ortiz
Director
Wind River Tax Commission
P. O. Box 830
Fort Washakie, WY 82514

RE: Proposed Discontinuance of Wyoming Tax Credits
on Wind River Reservation Production

Dear Mr. Ortiz:

The Rocky Mountain Oil & Gas Association (RMOGA) is an eight-state trade association representing the petroleum industry from the point of exploration and production through the refining and marketing process. RMOGA's state division, the Petroleum Association of Wyoming (PAW), joins in our comments. Rick Robitaille is division Executive Director, with offices in Casper, Wyoming.

RMOGA represents a substantial number of the operators active on the Wind River Reservation in the production of oil and gas. These companies are extremely concerned over the magnitude of the Tribe's Joint Business Council proposal to reduce or eliminate tax credits which have been equivalent to taxes these operators pay to the State of Wyoming and its political subdivisions. If implemented, the producers' blunt realization quickly computes tax and royalty rates approaching 60% of the value of the product at the wellhead. There is no feasible economic tolerance which permits a burden of this weight to be acceptable in an operator's costs, market and income. The consequences of the proposed new extraordinary tax policy would severely negate the expectation of the tribes, or industry, for income from current or future recoverable reserves. An intolerant tax policy promotes economic and physical waste of natural resources; oil and gas wells do not go dry, they merely reach their economic limits.

RMOGA members will respond in terms of more empirical evidence in their individual operating experience related to the Joint Business Council's tax proposal.

AD_ENDUM 5 C

March 29, 1990

Mr. Richard Ortiz
Director
Wind River Tax Commission

page two

The Association and its staff have worked cooperatively with a number of tribes over the past decade on the issues of tax rates, rules and regulations, and royalty management and rates. This broad experience is the basis of our comments and point of view.

- o The petroleum industry is in partnership with the tribes in the mutual goal of economic development on reservation lands. Exploring for and producing oil and gas is a joint effort so closely intertwined that neither lessee nor lessor may prosper to the disadvantage of the other.

- o Tribes and producers of tribal lands have suffered in equal terms over the recessionary conditions since the mid-80's, which saw the precipitous drop in oil and gas prices, reduced employment, and a depressed economic environment resulting in substantially lower capital budgets for exploration and development. Such detrimental conditions to the risk-takers in the oil patch created retrenchment and reorganization of companies for survival: an event well-documented. Our Shoshone and Arapahoe partners on the Wind River Reservation have not escaped the reality of reduced petroleum income and lost opportunity.

- o RMOGA annually reviews and publishes comparative tax rates (ad valorem and severance) on oil and gas production among the western states. We also review tribal tax and royalty rates. The proposed Joint Business Council tax increase would place Wind River oil and gas production taxes strikingly above all other tribal tax rates. Proposed Wind River production taxes (17.5%) combined with Wyoming state and local taxes (13.5%) would equal 31% of the value of production. The squeeze on the producers' bottom line is further constrained by high royalty rates. A RMOGA member reports that its current 27.5% royalty rate will soon be increased by 2.5% to 30%. We are uncertain as to what a weighted average royalty rate may be. We must reiterate, however, that our lessor partner cannot prosper in the long run without concern for the survival of the lessee.

- o Certainty vs. Uncertainty. Guaranteed security in the business of searching for and producing oil and gas reserves does not exist--nor is it expected. A prudent operator must look at geological prospects for petroleum reserves and weigh the alternatives of location against lease costs, drilling costs, tax and royalty rates, and the myriad of other expenses. Uncertainty of value at the wellhead will continue. The producers' econometric model will reveal, however, that state, federal and fee lands royalty rates and related taxes have in recent years remained fairly constant in the Rocky Mountain states. To the credit of the Shoshone and Arapahoe Tribes, their heretofore 4% severance tax has not changed. It is unfortunate that the current tax increase proposal is of such extraordinary magnitude. Producer confidence in Wind River governance will be irreparably harmed. The uncertainty of the future in this basin will unquestionably invoke the operators' options and alternatives.

There is certainty in the tax proposal with regard to negative effects. One of RMOGA's members, by example, will attest to the reduced economic life of its largest property. Company reservoir engineers estimate the life of the production under current economic conditions and costs, including taxation, at twenty years. Elimination of the tax credit reduces life expectancy to four years. The physical and economic waste of this natural resource is intolerable to both lessee and lessor. Please review with care other examples of accelerated depletion which will be presented.

- It is certain that contract work to tribal-owned companies will drop substantially because of the reduction of profitable wellwork. Lessee operators hire and rely on tribal employees for daily operations. Reduced activity on the Wind River Reservation will proportionately impact tribal employees and their jobs unnecessarily.

- Plug and abandon marginal production. The Joint Business Council does not address a reduced tax rate for stripper production. Nearly all taxing entities today recognize that incentives are proper and necessary to maintain stripper oil and gas production as long as possible. Plugged and abandoned production creates no jobs, tax, or royalty revenue. Further, it is common practice for larger companies to negotiate sale of stripper properties to small independent companies who can more efficiently extend the life of stripper production. RMOGA is aware of such negotiations currently in the process. There simply will be no expectation for a profitable exchange of these stripper properties to an independent producer, however efficient, with the economic intolerance of the proposed unmanageable tax burden. Moreover, highly feasible, but high cost, enhanced recovery projects will have wasted economic validity and opportunity.

- RMOGA members, through litigation and various other means, have attempted to reconcile the problem of state and local taxation of reservation activities which substantially interferes with the tribes' ability to raise its own tax rate. It is disappointing to see the Joint Business Council continue to accept "multiple taxation", and to ignore the pursuit of economic self-determination. The unpredictable escalation of tax rates within this taxing scheme promotes an uncertain business environment which adversely impacts on tribal interest.

RMOGA and PAW strongly urge the Joint Business Council to reconsider its recent action to remove State of Wyoming tax credits on the Wind River

Reservation production. Our comments sincerely reflect the point of view of our membership. We plan to attend the public hearing to further emphasize our concerns.

The Associations would also be pleased to meet with the Joint Business Council subsequent to the public hearing April 12th, if such meeting would seem useful to the Council.

Sincerely,

Ken Monroe

Ken Monroe
Tax and Royalty Division Director

CONOCO

William L. Brister
Division Manager
Casper Division
Exploration and Production, North America

Conoco Inc.
851 Werner Ct.
Casper, WY 82601-1311
(307) 261-7800

March 29, 1990

MAR '90
Received
Wind River

Mr. Richard L. Ortiz, Director
Wind River Tax Commission
P. O. Box 830
Fort Washakie, WY 82514

Dear Mr. Ortiz:

Conoco Inc. is very concerned about the recent proposal of the Joint Business Council to discontinue the credits for Wyoming state taxes currently allowed against the Tribal severance tax.

Conoco operates three fields on the Wind River Indian Reservation and has working interests in properties operated by other producers. It is our intention to continue these operations, and there are plans to acquire additional acreage to expand our reservation reserves. We are also reviewing possibilities for enhanced recovery projects which would prolong the life of our older fields. These projects, if implemented, would be extremely beneficial to both the Shoshone and Arapahoe Tribes and Conoco. However, if the proposal is implemented, Conoco will be forced to minimize our current operating expenses and will forego any expansion plans, drastically reducing the long-term revenues for both parties.

Our Production Department engineers have performed an economic impact analysis to determine the effect of the tax credit removal on our current reservation operations. Following are the conclusions:

1. Conoco currently operates the Circle Ridge, Maverick Springs, and Riverton East Fields on the reservation. The tax increase would not cause Conoco to shut-in any of their current production at current prices but would have an impact on the producing lives of the fields. If prices take a downturn as seen in 1986, the tax increase would have a much greater impact on field lives. Fields would have to be shut-in if prices reached a low enough level which would not be beneficial to the tribes or Conoco. The major impact will be on future exploration, infill drilling, waterflooding, CO_2 flooding, and remedial work. The elimination of future work will increase the field decline rates which will decrease reserves, in turn decreasing tribal revenue. Conoco uses tribal companies and tribal labor to perform a majority of the work involved with the remedial projects. In the last year, Conoco spent over $357,200 on tribal labor which included company and contract labor. Many of these companies will be out of

business if future projects are cancelled due to poor economics caused by the tax increase.

2. Attached is a production decline curve for Circle Ridge Field which illustrates the importance of remedial work on a field decline rate. From 1981 to 1985 not much work was performed at Circle as shown by the constant decline rate. From 1986 to the present, three waterfloods have been installed, three wells have been drilled, and many other projects have been performed such as pump upsizes and stimulations. This work added an additional 1,300,000 barrels of oil reserves or approximately $7,686,400 in royalties and taxes to the tribes. Circle Ridge has a large amount of reserves that can be recovered by remedial projects which will extend the life of the field and increase tribal revenue. The field is currently being reviewed for the possibility of tertiary recovery. An estimated 5,000,000 barrels of reserves could be recovered over the life of the field with a successful immisible CO_2 flood. This increase would amount to $33,870,000 in tribal revenue at current prices and current royalty and tax rates. With the increased tax burden, a majority of these projects will not be economical, and the field decline rate will increase as it did in 1981.

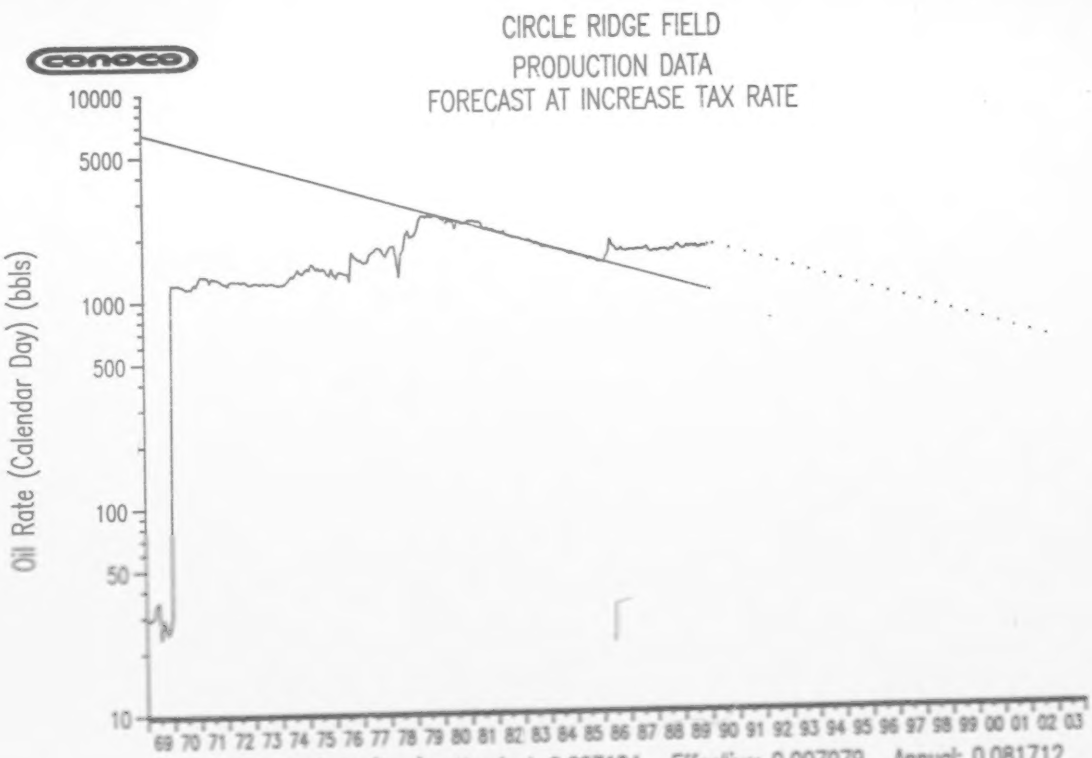
In conclusion, Conoco wishes to continue our economic relationship with the Shoshone and Arapahoe Tribes and feels that such a dramatic tax increase would severely impair this partnership. If the Business Council opts to discontinue the tax credits, some consideration should be given to reducing the effective rates for marginal and stripper production operations and some incentive for new development wells.

Thank you for giving us the opportunity to comment on this proposal. We plan to have representatives at the hearing to enhance these written comments.

Yours truly,

W L Brist

W. L. Brister
Division Manager



CIRCLE RIDGE FIELD
PRODUCTION DATA
FORECAST AT INCREASE TAX RATE

Decline Rate (frac) Nominal: 0.007104 Effective: 0.007079 Annual: 0.081712
Current Oil rate: 1820.6 bbls/d
Economic Limit: 0.0 bbls/d
Cumulative Oil Produced: 12397.6 Mbbls
Remaining Reserves: 5221.7 Mbbls
Total Reserves: 17619.3 Mbbls – At End of Forecast

SGC Thu Mar 29 10:14:42 1990

HOMESTEAD ASSOCIATES
303-234-9932

1095 GARRISON
Lakewood, CO 80215

CERTIFIED MAIL NO. P 564 148 731
RETURN RECEIT REQUESTED

3/26/90

Richard L. Ortiz
Shoshone & Arapaho Tribes
Wind river Tax Commission
Box 830
Fort Washakie, WY 82514

SUBJECT: Reply to Discontinuation of Taxpayer Credits for Severance taxes paid to the State of Wyoming

Dear Mr. Ortiz :

On behalf of Homestead Associates I am writing with great concern over the letter dated February 13 1990. The implications of a removal of the tax credits to the Wyoming Taxing Authorities will have a very negative effect on the production from our well.

This problem of taxation is between the State of Wyoming and the Shosone & Arapaho Tribes. It is our feeling that it is unjust for the State of Wyoming to collect Taxes on Tribal lands when little or no services our provided for those lands. Homestead Associates is currently paying a double severance tax on the production from the property which is far in excess of the taxes paid on Federal lands or State lands. This has a severe impact on our well.

The Dora Enos well, Lease number 634-00326-0-001, is producing under 10bbls a day and therefore qualifies as a Stripper well. With ever increasing cost in operating the well, there reaches a point where the return on investment of such a well is not worth the efforts involved

With the removal of the Tax Credit we will be brought one step closer to plugging the well. That will stop all tax moneys received by any taxing authority and interest received by the royalty owner. We urge you to strongly reconsider this course of action.

Should you have any answers to this problem, please contact me at 303-234-9932

Sincerely

Michael B. Pfeifer

ADDENDUM 5 E

MAR 1990
Received
Wind River Tax Dept.

NANCE PETROLEUM CORPORATION
550 North 31st Street, Suite 500
P.O. Box 7168
Billings, Montana 59103
406 / 245-6248

March 27, 1990

MAR 1990
Received
Wind River Tax Dept.

Mr. Richard L. Ortiz
Director
Wind River Tax Commission
Box 830
Fort Washakie, WY 82514

Dear Mr. Ortiz:

Nance Petroleum Corporation is critically concerned about the recent proposal of the Joint Business Council to discontinue tax credits for taxes paid to the State of Wyoming. While the short term increase in revenue to the Tribes may seem attractive, the ultimate mid to long term effects will be devastating to the Tribes and industry. If the present credits are removed, marginal or stripper wells will reach a premature economic limit and will be subsequently plugged and abandoned, leaving in the ground unrecovered reserves that will be lost forever. It is a common misconception that it is possible to restore production once a well is plugged. The cost to replace equipment, and do whatever remedial work required to restore production simply would never be recovered by the remaining reserves. This is why it is so important to recover as much of the remaining reserves as possible while the well is still in a producing status. In order to do this, the economic limit must be extended as far into the future as is possible. Removing tax credits has just the opposite effect. This same scenario applies to entire fields. As wells reach or get closer to the economic limit, entire fields will be prematurely closed and the remaining reserves in all likelihood will be lost forever.

Nance Petroleum Corporation, a small independent oil and gas company headquartered in Billings, Montana, is in the process of buying the interests of Amoco in the Lander and Winkleman Dome fields. We have previously acquired the interest of Presidio in the Lander Field. The economic parameters employed to make these acquisitions are very sensitive to factors such as net revenue interests and taxes. Because most of the revenue received from these fields will be used to retire debt that was incurred in the acquisitions, added burdens, such as your election to remove the tax credits, will severely affect our ability to make payments to retire our incurred debt. The only method we can employ to offset this added burden will be to make drastic cuts in our costs of operation, including employment reduction and a plan of reduced goods and services used in connection with the present operation, which combined will directly affect the economy of the area and immediate vicinity in which the fields are located.

As a specific example, the removal of the tax credits will shorten the economic life of the Lander and Winkleman Dome fields by a minimum of 25% This translates into approximately 1.5 million barrels of reserves left in the ground that will be lost; 1.5 million barrels of reserves that royalties and taxes won't be paid. Not only will the direct revenue in the form of taxes and royalties be lost on these unrecoverable barrels left in the ground, but an immeasurable economic impact to the area because of the normal trickle down effect.

It is our intent to develop a good, close working relationship with the Tribes and their members with our acquisition of these two fields which we would hope will last over many years. We intend to participate in the public hearing scheduled for April 12, 1990, where we might be able to further emphasize the economic impact on the industry and the Tribes. If you should so desire, we would be happy to discuss any of these matters in further detail at any time.

Sincerely,

D. Scott Frizzell
Land Manager

/dsf

ARCO
Tax
Post Office Box 2819
Dallas, Texas 75221
Telephone 214 880 5001

Patrick M. Preston
Manager
Property and Excise Tax

March 30, 1990

VIA FEDERAL EXPRESS

4
APR 1990
Received
Wind River Tax Dept.

Joint Business Council and
Wind River Tax Commission
Attn: Mr. Richard Ortiz
17 N. Fork Road
Fort Washakie, WY 82514

Dear Mr. Ortiz:

Atlantic Richfield Company ("ARCO") appreciates the opportunity to comment on the Notice of Proposed Rulemaking, Notice to Taxpayers No. 010. Such Notice advises taxpayers of the Joint Business Council's and the Wind River Tax Commission's intent to discontinue the tax credits for amounts paid to Wyoming taxing authorities.

ARCO respectfully submits the following comments in connection with the Tribes' proposed rulemaking notice. The Shoshone and Arapaho Tribes' oil and gas resources are a major source of revenue for the Tribes. Since this valuable revenue source is of mutual interest to both the Shoshone and Arapaho Tribes and the oil and gas industry, our destinies and economic well-beings are closely connected. In fact, it can be said that the Shoshone and Arapaho Tribes as royalty owners are in partnership with industry for the joint production of oil and gas.

Back in 1980 and 1981 all of us were anticipating that oil prices would continue to rise. The question was how fast and how far. No one was forecasting that oil prices would decline. We now know that those forecasts were inaccurate and that both the oil and gas industry and the Shoshone and Arapaho Tribes suffer from reduced oil prices.

Gas prices have also been depressed. Decontrol of natural gas prices was not a cure-all for the natural gas industry. Producers are not able to obtain the maximum lawful price permitted by the Federal Energy Regulatory Commission on production subject to price control, since the supply of and demand for natural gas will not support the maximum lawful price.

Our industry suffers from declining energy prices more than the Tribes because we bear the entire cost of exploration, development, and operations. Although ARCO is reducing costs wherever possible, these significantly lower oil and gas prices are causing some producing fields to become marginally economic and others to be unprofitable to operate in their present configuration.

ARCO has responded to this changing economic environment by selling unprofitable assets and significantly reducing oil and gas exploration. Although many oil and gas exploration opportunities exist in the world, ARCO has limited capital to explore such opportunities. Consequently, potential exploration projects must compete for those limited resources.

Implementation by a taxing jurisdiction of a high tax structure without taking into consideration current economic condition may cause severe effects on potential and current exploration and production activities. Therefore, any tax increase could prove detrimental in today's environment. Especially in light of the economic decline of the oil and gas industry which is predicted to prevail for several years.

Based on the foregoing overview of the oil and gas industry, ARCO offers for your consideration the impact of the Tribes' proposal on production from the Reservation. ARCO engineers analyzed the impact of the Tribes' proposal on the economics of ARCO's production from the Riverton Dome field. ARCO produces from a number of zones or reservoirs because of the geological formation of this field. ARCO's engineers calculate that an effective increase in severance tax from 4% to a total Tribal severance tax rate in excess of 18% (an effective increase in excess of 350%) would curtail production from and reduce the economic life of this field earlier than previously anticipated. The rate of 18.2% used in ARCO's economic model is composed of the Tribal severance tax rate of 4%, the State of Wyoming severance tax rate of 6%, the county ad valorem tax rate of 8.212% and the Wyoming conservation tax rate of .04%.

In addition to the proposed Tribal tax rate, production from the Riverton Dome field is also burdened by the taxes imposed by other Wyoming taxing jurisdictions. The total tax burden imposed on production from the Riverton Dome field under the Tribal proposal exceeds 32%. This rate is composed of (i) the proposed Tribal rate of 18.2%, (ii) the Wyoming tax rates of 6.004% for severance and conservation taxes and (iii) the 8.212% county ad valorem tax. In addition to these taxes, production from the Riverton Dome field is also burdened by an approximate 13% royalty rate for a total tax and royalty burden of over 45.4%.

Up to this point in the discussion, ARCO has addressed the impact of a tax increase on the Riverton Dome field. ARCO would now like to direct your attention to the reservoirs within that field, specifically the Phosphoria, Fort Union and Frontier Reservoirs. ARCO studies indicate that, given the proposed rate of 18.2%, production from the Phosphoria Reservoir would be shut in immediately, because wells producing from that reservoir are already marginally economic. Additionally, ARCO estimates that the life of the Fort Union Reservoir will be cut in half from an estimated 10 year remaining life to only 5 years. Due to the removal of the tax credit, wells from the Frontier Reservoir would be shut in earlier than projected making approximately one billion cubic feet uneconomical to produce. Thus, the additional tax burden proposed by the Tribes will result in the early abandonment of these reservoirs thereby eliminating royalty, taxes, and spin-off activities generated by oil and gas production from these reservoirs.

In addition to the foregoing, the economics of the Riverton Dome field are already constrained by the rules under which natural gas is valued for purposes of the Tribes' severance tax. This constraint is based upon the Tribes' severance tax regulations which require ARCO to calculate and remit severance taxes on a value greater than gross proceeds. This regulatory requirement for valuing gas results in ARCO's effective tax rate on natural gas production exceeding the current statutory rate of 4%. Therefore, under the Tribes' proposal, the economic impact is more severe to natural gas producers such as ARCO because producers of crude oil usually value their crude and pay their tax liability on actual proceeds received. This means that, given the proposed change in the severance tax rate, the difference in severance tax dollars between the statutory rate and the effective tax rate for ARCO would be significantly greater than if severance taxes were imposed only on the gross proceeds received from the sale of natural gas from this field.

In light of the economic conditions facing the industry and the adverse impact that the ad valorem, production and conservation taxes have on oil and gas exploration and production, ARCO urges the Joint Business Council and the Wind River Tax Commission to re-examine the overall level of taxation on the oil and gas industry. ARCO also requests that the Wind River Tax Commission and Joint Business Council keep in mind that the U.S. Supreme Court in the Cotton Petroleum case has determined that states have the right to tax industry on its production from Tribal Lands. ARCO believes that this decision is economically detrimental to both taxpayers engaged in oil and gas exploration and production on Tribal Lands as well as the Shoshone and Arapaho Tribes themselves. As a result of the decision, an oil and gas producer has to take into account the additional burden of state taxes when considering future investment on Tribal Lands.

In view of the above, ARCO strongly urges the Joint Business Council to reconsider its recent action and not remove the credit for Wyoming severance tax. Removal of the credit has the effect of increasing the Tribe's severance tax in excess of 18%. When this tax rate is combined with the state tax rate, the county tax rate and the Tribes' royalty, the economic burden on production within the Reservation approaches 46%. As stated earlier, in light of the economic conditions facing the industry, any increased tax burden would have an adverse impact on oil and gas exploration and production within the Wind River Reservation.

If you have any questions, we will be happy to discuss our written comments with you at your convenience.

Sincerely,

Beverly Thompson

Beverly C. Thompson
Sr. Excise Tax Advisor

BCT/jmb

Chevron

Chevron U.S.A. Inc.
6400 South Fiddler's Green Circle, Englewood, CO 80111, P. O. Box 599, Denver, CO 80201

G. H. Thomas
Division Production Manager

March 16, 1990

Proposed Discontinuation of Wyoming
Tax Credits on Wind River
Reservation Production
from Chevron Operated Fields
Fremont County, Wyoming

Mr. Richard L. Ortiz
Director
Wind River Tax Commission
Box 830
Fort Washakie, WY 82514

Dear Mr. Ortiz:

Chevron U.S.A. Inc. is extremely concerned about the recent proposal of the Joint Business Council of the Shoshone and Arapahoe Tribes to discontinue tax credits for taxes paid to the State of Wyoming. As you know, Chevron operates and is the sole working interest owner of the Steamboat Butte and Pilot Butte Fields on the Wind River Reservation and both operated and nonoperated working interest in Muddy Ridge Field. In light of recent lease settlements and our hope for favorable settlements of certain other outstanding leases, Chevron is looking forward to many more years of operations that will be beneficial to both the Shoshone and Arapahoe Tribes and to Chevron. However, if the proposal is implemented, Chevron will not be able to operate in the area for more than a few years and there will be a drastic revenue reduction to the parties involved.

Our Petroleum Engineering Department performed an analysis to determine the effect of the removal of the tax credits on Steamboat Butte, Pilot Butte and Muddy Ridge Field operations and its impact on revenue to the Tribes and Chevron. The following are our conclusions:

1. If adopted, this proposal will have an immediate impact on the revenue to the Tribes at Steamboat Butte Field, the largest of the three fields, the overall revenue to the Tribes will decrease even though the Tribal tax is being more than doubled from 8.5% to 17.21%. This decrease would result because we estimate that over 10 of the 36 currently producing wells will become uneconomic for Chevron to produce and will be shut-in, with a drop in production of about 365 BOPD. The Tribes' revenue is calculated as follows:

   Current Revenue to Tribes =

   1806 BOPD * 15.33 $/bbl * (.225 + .775*.085) = 8053 $/day

   Short Term Revenue to Tribes under the Proposal =

   1441 BOPD * 15.33 $/bbl * (.225 + .775*.1721) = 7917 $/day

   7917 - 8053 = <136> $/day

ADDENDUM 5 H

As discussed below, this decrease in revenue would become larger as time goes on.

2. The removal of the tax credit would result in a total tax and royalty burden which would be in excess of 49% and would greatly restrict the amount of economic wellwork which could be performed. Chevron has formed a Steamboat Butte Study Team for the purpose of increasing production at Steamboat Butte and has already identified 10 to 20 possible remedial wellwork candidates which should produce a minimum increase in production of 500 BOPD for the field in 1990. Most or all of this work would not be economic under the proposal.

3. The economic life of the Steamboat Butte Field would be reduced from its current estimate of 20 years to 4 years. A production forecast with and without the tax credits is presented in Figure 1.

   Curve 1 assumes continuation of the tax credits which would promote our efforts to increase production by 500 BOPD in 1990 and keep a decline rate thereafter of 5% (this is the decline rate Steamboat Butte has averaged over the past 20 years). The economic limit at the current tax rate is 831 BOPD which will take 20 years to reach.

   Curve 2 assumes elimination of the tax credits which could result in shutting in 365 BOPD. The decline rate is also increased to 10.8% which was the decline rate in the early 1970's when very little wellwork was being performed. In the past 8 years, Chevron has spent considerable time and money to continue production with a very moderate decline rate of less than 4% over that time period. If the proposal is implemented, most of this work would cease including approximately 40% of the "routine" well pulling. The economic limit would increase to 990 BOPD and this limit would be reached in 4 years.

4. Revenue to the Tribes from Steamboat Butte royalties and taxes will be greatly reduced. Figure 2 shows the forecasted yearly revenue to the Tribes with and without the tax credits. As is shown, the Tribes will lose money every year, including the first year, by elimination of the tax credits. Figure 3 shows cumulative revenue for the Tribes with and without the tax credits. With the tax credits, the Tribes will receive approximately 48.23 MM$. Without the tax credits, the Tribes will only receive revenue for 4 years amounting to only 9.72 MM$.

5. If implemented, the proposal would also kill a potential CO_2 flood from being installed at Steamboat Butte. The Steamboat Butte Team is actively studying the possibility of installing a CO_2 flood at Steamboat Butte and all studies into CO_2 potential at Steamboat Butte would be terminated.

6. We would stop negotiations and withdraw our offers for the Brinkerhoff and Pilot Butte leases and cease lease operations on this acreage. We would also have to withdraw our offer to lease additional acreage because we could not economically develop any reserves under the proposal.

7. Muddy Ridge gas production would become even more marginal due to the loss in tax credits.

8. Contract work to Tribal-owned companies will drop by an estimated amount of 34% because of the reduction of profitable wellwork. This translates to a decrease of $56,000 of income to Tribal members in 1990.

9. If implemented, the proposal would cause waste by leaving hydrocarbons in place, i.e., economically recoverable reserves in the Steamboat Butte Field would be reduced at least seven (7) fold.

We believe that the foregoing clearly shows that implementation of the proposal would be very detrimental to Chevron and the Tribes. It must be stressed that Chevron has very definite plans for increasing production at Steamboat Butte which will be stopped due to loss of the tax credits. Accordingly, we urge the JBC not to implement its proposal.

We plan to attend the public hearing to further emphasize our position and would be happy to discuss any of these matters in more detail at that time.

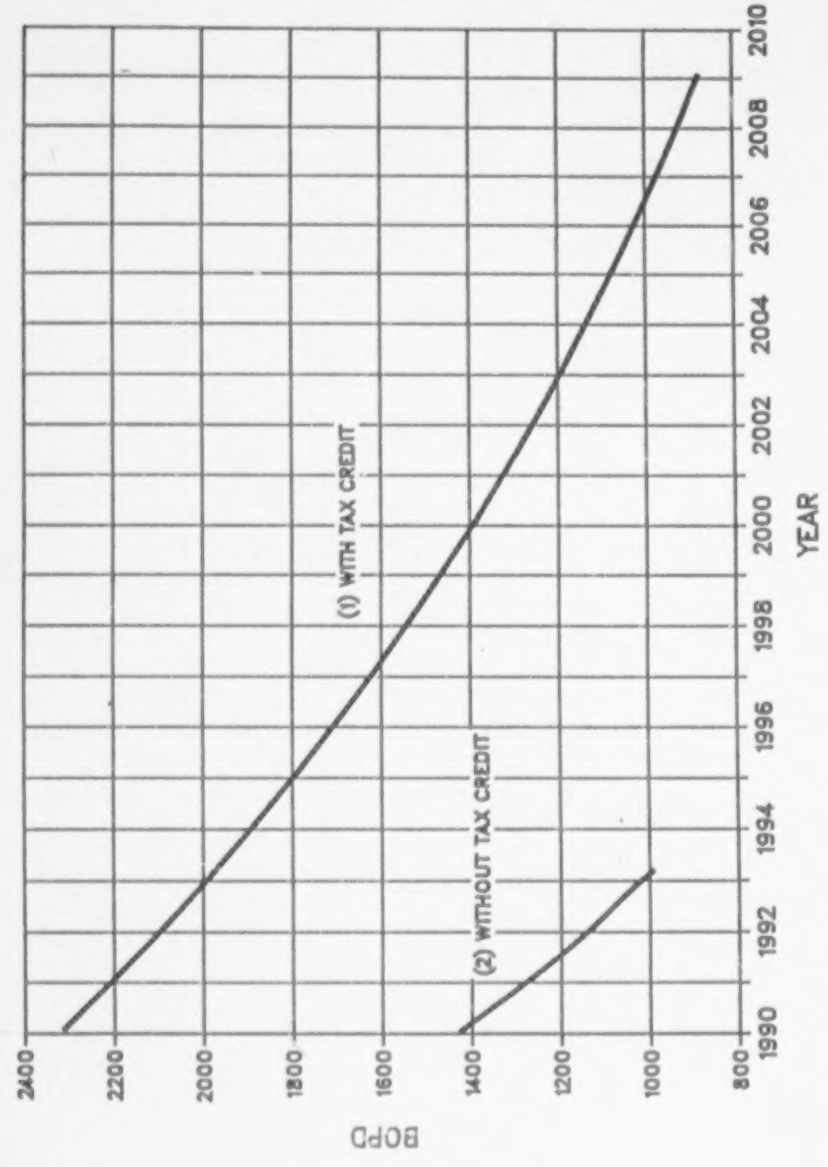
Sincerely,

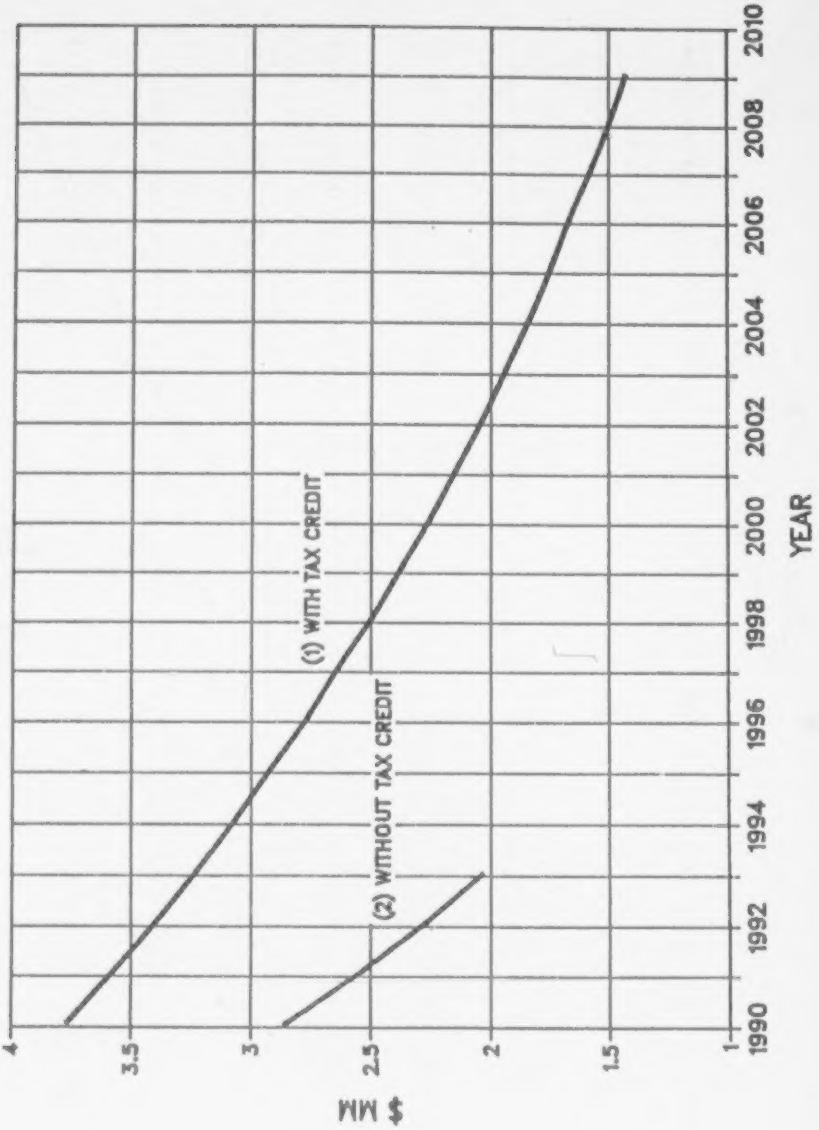
SOHarbour

for G. H. Thomas

KFR/CES:maw
cc: G. L. Park - CUSA, Evanston
O. M. St. Clair - Arapahoe/Shoshone Joint Business Council
L. G. Spencer - Chevron Corporation Tax Department, San Francisco
O. F. Baldwin II - Land, San Ramon

STEAMBOAT BUTTE
PRODUCTION FORECAST
FIGURE 1

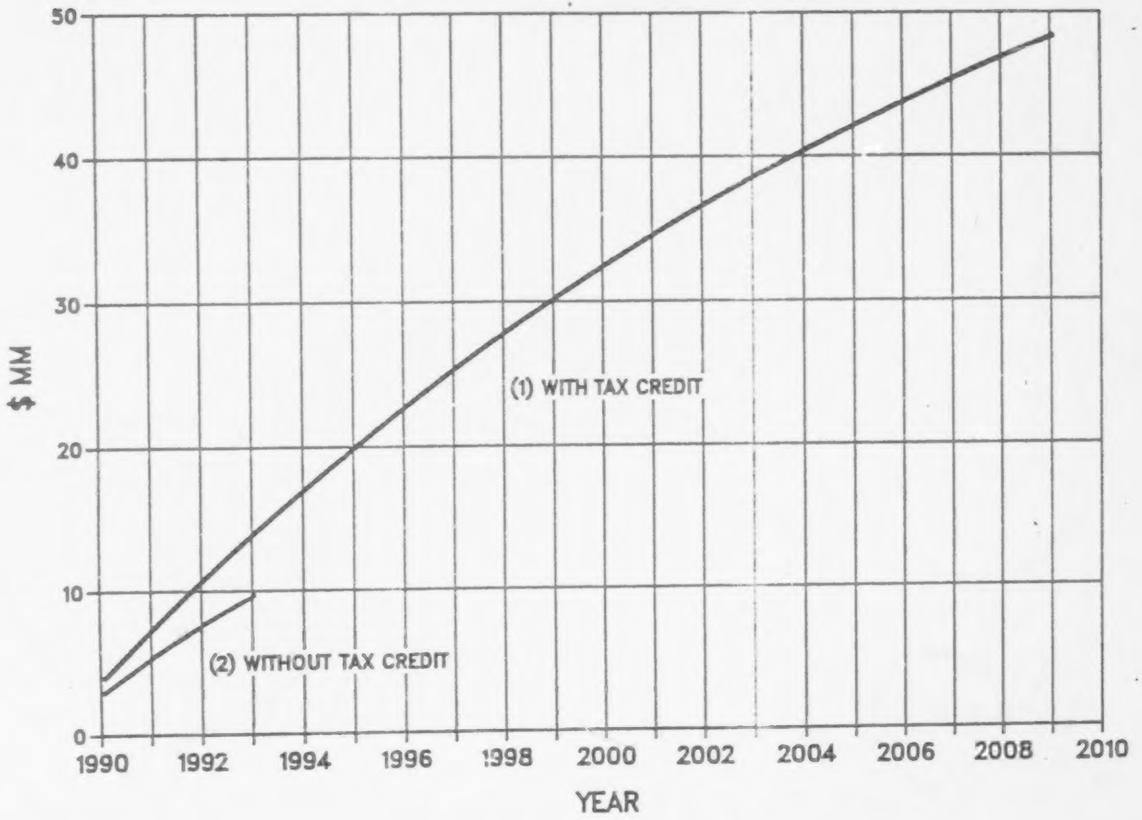




STEAMBOAT BUTTE
TRIBE'S YEARLY CASH FLOW FORECAST
FIGURE 2

STEAMBOAT BUTTE
TRIBE'S CUMULATIVE CASH FLOW FORECAST

FIGURE 3



N7P 010

PIONEER OIL & GAS

CERTIFIED #P 843 835 244

FEB 1990
Received
Wind River Tax Dept.

February 22, 1990

Shoshone & Arapaho Tribes
Wind River Tax Commission
Box 830
Fort Washakie, WY 82514

Attn: Richard L. Otiz, Director

Re: Overtaxation of Producers
Wind River Indian Reservation
Fremont County, Wyoming

Gentlemen:

This letter is in response to your letter dated February 13, 1990, regarding the discontinuance of the Agreement between the Tribes and the State of Wyoming. Presently, the properties we have on the Reservation are taxed more heavily than they are anywhere else. By discontinuing the Agreement with the State of Wyoming and maintaining the present tax structure we are in effect being hit with an additional 4.5% severance tax bringing the total tax on the gross to approximately an unheard of amount of 20.0% of the gross production. Taxing at that high of a rate would not benefit the Tribes whatsoever since it would totally wipe out any future development and cause many stripper wells to be plugged and abandoned.

If the Tribes are needing more funds, increasing the tax on oil and gas would not assist the situation. In fact, the opposite would occur since exploration would cease, eliminating jobs from drilling activities which in turn would reduce the amount of the total oil revenue for the Tribes. If the Tribes desire to increase revenues, it should cut taxes, that would send a signal to independents that the Tribes desire development of their properties. In Utah, the State lowered its royalty rate from a sixth to an eighth on new leases and in the first month after the change, more properties were leased by the State than had been in the last twelve months before the change. The change allowed the State to receive more money in one month than it did for the previous 12 months.

ADDENDUM 5 I

On the Ute Indian Reservation, the reverse happened. The Ute Tribe trying to increase revenues began levying a 10.0% severance tax that totally destroyed the oil industry in the area and sent the surrounding communities into a depression. Raising taxes is not the answer when already we are taxed at a higher level on the Wind River Indian Reservation than anywhere else.

Please look at the long run and don't be short sighted in making decisions that may increase revenues in the short term but have devastating effects down the road. Discontinuing the Agreement between the State of Wyoming and allowing your tax rates to remain constant is in effect a tax increase that will only further hurt an industry that is already suffering. Please make the Reservation a place with an incentive to drill for oil and gas. Such a place would increase tax revenues since the total pie would be increased and not shrunk when a tax increase is imposed. Further, an increase in total revenues by decreasing taxes would increase the amount the Tribes receive on their royalty income. The members of the Tribe would also have more job opportunities due to expanded exploration activities that would decrease the demand for services on the Tribes.

If I may be of further assistance in helping you make your decision or you would like to discuss this letter with me, please contact me.

Sincerely,

Gregg B. Colton

Gregg B. Colton
Vice President

GBC/tbp

Eli D. Bebout

April 10, 1990

Joint Tribal Business Council
Shoshone and Arapahoe Tribes
P.O. Box 830
Ft. Washakie, WY 82514

Attention: Mr. Richard Ortiz
Director of Wind River Tax Commission

Re: Proposed tax and royalty increases on production of oil and gas on the Reservation.

Gentlemen:

I would like to take this opportunity to present to the Joint Tribal Business Council some observations, views and concerns that I have regarding the proposed elimination of the State tax credits for taxation of oil and gas produced on the Reservation. I speak to you not as an elected Representative of Fremont County nor as one who is involved in the oil and gas industry, but as a concerned individual about the ramifications and potential ultimate results, which may be detrimental to the Tribes.

First of all, let me say that I continue to support (as I have in the past) the Tribes' rights to property and resources within the reservation owned by them through present law and treaties. My comments do not pertain to any legal issues regarding the Tribes right to tax oil and gas. My comments are more related to a real concern that I have regarding the direction the Tribes may be taking on the taxation issue of oil and gas production.

I perceive the duties and obligations of members of the Joint Business Council to get the best rate of return possible from mineral resources on the Reservation. I support this effort! Having said that, I would like to expand somewhat on some of the negative impacts to the Tribes that I foresee could happen should you eliminate this tax credit.

The oil industry is a very capital intensive and competitive business and I must currently add, a depressed industry. Only one out of seventeen wells drilled is a productive well. Independents and large oil companies who risk large amounts of capital in drilling for oil and gas build into their economics certain factors that allow them to judge economically whether or not they should risk the funds. High on the list of these factors is the burden placed on the proposed wells through overriding royalties and taxes. If one were to look at the State of Wyoming as a potential environment to drill oil or gas wells, one would have to compare the royalties and taxes paid on Federal, State or private lands with the royalties and taxes that would be paid on the Reservation. Presently, the royalties on most Federal leases begin at 1/8th, State leases at 1/16th, and private leases at about 1/8th. The Statewide taxation on oil and gas is 6% severance for oil wells, excluding stripper production, and approximately 6 1/2% ad valorem on production. If the Tribes feel they should collect 30% royalty and in addition to the State taxes, have a 13 1/2% tax, this will have a negative impact on the decisions of these people who may spend money exploring for oil and gas on the Reservation.

The Wind River Reservation is a huge area with tremendous natural resource potential. To fully explore this potential requires exploration drilling. I feel that with this type of tax burden, most if not all oil companies, will not be very interested in wildcat exploration for oil and gas. This, of course, has a negative impact on members of both Tribes, who rely so heavily on the revenues generated by the oil and gas production. (I also think it would be very risky for the Tribes to spend their own money to explore for oil and gas.) I'm sure all of you are aware of the level of expertise maintained by major oil companies and independents. It is hard to put a dollar value on this segment of the industry. This expertise is very important not only in finding viable prospects for drilling, but once oil or gas has been found, being able to put the wells into production and sustain that production. This provides the Tribes with their needed income through royalties and taxes. Considering these two very, very important reasons, if the Tribes eliminate the tax credit resulting in a large increase in taxes and demanding such a high royalty, it will be a deterrent to future exploration. An interesting comparision of this would be to look at other similar situations where due to government bureaucracy and high taxation, oil exploration ceases to exist.

The other reason for the Tribes acting on this tax question is that they may wish to own the existing production and manage it themselves. From a tax standpoint, this might make sense to the Tribal Councils. However, if this is their motive, I would urge that they proceed with caution. I would suggest that they take a long, hard look at the cost of providing the expertise and capital necessary to run an oil field.

Another area of concern that eliminating the tax credit would have is the loss of potential jobs by Tribal members through subcontractors who work on these fields for the producers. I don't have available to me a list of how many members of the Tribes are currently employed directly or indirectly in oilfields, but I would guess that there are a substantial number of people involved.

You will hear today from various producers on the Reservation and their input to you on the economics and impact this type of taxation may have on existing producing fields.

In closing, I would once again say that I support the position of the Joint Council to receive the maximum return on mineral resources owned by the Tribes. In trying to receive the maximum, I would urge you to use caution and hope that the Council would take into consideration not only all the points that I have presented, but the points of the producers as well, in making this very important decision.

I shall continue to support, as I have in the past, the efforts of the Tribal Council to provide education, social services, jobs and funds to improve the standard of living for members of the Tribes on the Reservation. Thank you for allowing me this opportunity to present some of my thoughts on this issue.

Sincerely,

Eli D. Bebout (By KSB)

Eli D. Bebout

EDB/ksb

ADDENDUM 5 K

Tom Brown, Inc.

Presentation to
Wind River Tax Commission

April 12, 1990

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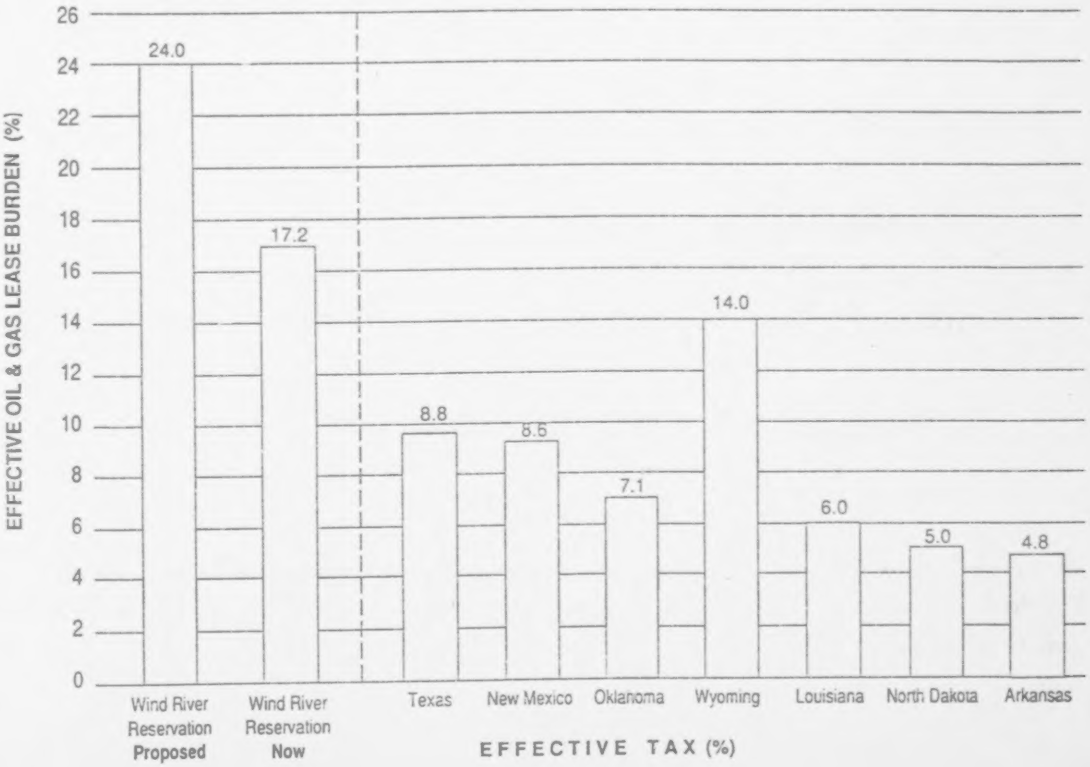
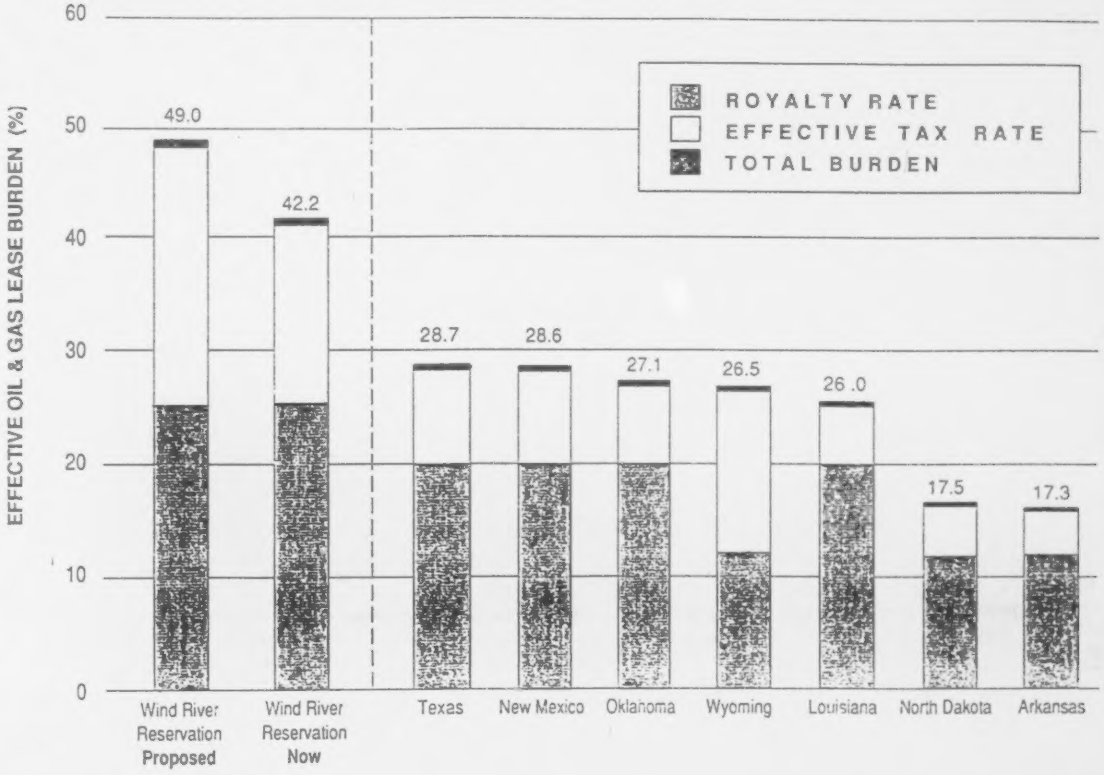
- Low Tax / Royalty Costs Stimulate Gas Exploration & Development
- Low Transportation Costs Stimulate Gas Exploration & Development
- Lower Costs Generate Higher Revenue

Effective Tax Burden by State



Tax/Royalty Burden Comparison



*Wind River Reservation

Mainline Gas Transportation Costs

	DESTINATION			
FROM	West Coast	Midwest	Gulf Coast	East Coast
West Texas	.60	.45	.50	1.10
Arkansas	1.00	.60	.50	1.10
Oklahoma	.90	.40	.70	1.20
N. Dakota	1.40 **	.70 **	1.50 **	1.00 **
N. Mexico	.60	.50	.70	1.20
Gulf Coast				
Texas	1.10	.50	.00	.80
Louisiana	1.25	.40	.00	.70
Wyoming	1.00 * 1.50 **	.50 * 1.00 **	1.10 * 1.60 **	1.10 * 1.60 **

* Not Utilizing WBI
** Utilizing WBI

Tom Brown, Inc. P O Box 2608 Midland Texas 79702 2608 (915) 682 9715

March 30, 1990

Mr. Richard Ortiz
Director
Wind River Tax Commission
P.O. Box 830
Fort Washakie, Wyoming 82514

Re: Proposed Discontinuance of Tax Credits Allowed for Taxes Paid to Wyoming Taxing Authorities;
Wind River Reservation
Fremont County, Wyoming

Dear Mr. Ortiz:

Pursuant to your Notice to Taxpayers No. 011, received by this office on March 20, 1990, Tom Brown, Inc. ("TBI") wishes to submit the following comments, and wishes also to notify you that its representatives plan to attend the hearing which will be held in Fort Washakie on April 12.

TBI has been an active oil and gas producer on the reservation for approximately fifteen years. It presently operates both the Muddy Ridge and Pavillion Fields, and has several exploration and development proposals pending before the Joint Business Council. TBI has always made an effort to consult with the Tribes on important issues and decisions, and has attempted to structure and conduct its business on the reservation in a manner which is fair to both the Company and the Tribes.

As you know, the elimination of the credit for taxes paid to the state and local taxing authorities will increase the effective tax rate on production from the reservation from approximately 17.25% to approximately 23.25%. Coupled with the 25% royalty which TBI pays on much of its reservation production, the effective burden on production will be in excess of 48%.

As we have discussed with you previously, the majority of TBI's assets are located in four areas; the Wind River Basin (both on and off of the reservation), west Texas, western North Dakota, and western Arkansas. Before TBI undertakes any exploration or development project, it performs an economic analysis of the project. In performing such an economic analysis, economic burdens on the production (tax, royalty, and overriding royalty) are one of the most significant factors which is considered. Higher burdens make any such proposal less attractive, and if the burdens are sufficiently high, the project becomes uneconomic. Exhibits A-1 and A-2 to this letter are an analysis of relative royalty and tax burdens in the areas where

TBI is likely to consider spending exploration capital. Because both the royalty rate and the effective tax rate for reservation oil and gas are substantially higher than in the other areas, it will put reservation activity at a severe disadvantage in terms of TBI's future exploration and development activity. While the reservation is a favorable environment in terms of geological potential for oil and gas production, economic burdens of almost 50% will make it extremely difficult for producers to justify any further investment in exploring for and developing reservation resources. Many opportunities for investment exist in areas where the geological prospects are just as favorable as those on the reservation, and where the economic burdens are much lower.

The higher tax rates will not only make future drilling activities much less likely, but also have a negative effect on the life of presently producing wells. As the tax burden rises, the economic life of an oil or gas well becomes shorter. It will become uneconomic to operate the well much earlier in the life of the well if the burdens against that well's production are increased, and it will become necessary to plug and abandon the well at an earlier point in time. Additional pressure on the profitability of domestic oil and gas production has been created by the significant downturn in oil and gas prices which has occurred since 1986. Adding increased tax rates to an asset which is already burdened by lower prices will only further decrease the life of the asset.

It is clear to TBI that oil and gas exploration and production will be maximized by a tax and royalty structure which is competitive with other jurisdictions. It is also clear that dual taxation by the Tribes and the State will not produce a competitive economic structure on the reservation.

Two potential solutions occur to us. The first would be a negotiated settlement between the Tribes and the state and local taxing authorities. Clearly, the state and local governments provide some services on the reservation. It logically follows that some portion of the severance and ad valorem taxes should go to the state to compensate it for the services which it actually provides. Conversely, the Tribes currently provide certain services, and could assume from the state and local governments the responsibility for providing other services. The Tribes should receive that portion of the subject tax revenues which would be attributable to the services which it ultimately provides.

Another potential solution would be federal legislation overturning the Cotton Petroleum decision. Ideally, such legislation would provide that a state would have concurrent authority to tax only to the extent that it actually expended funds on, and provided services to, a particular reservation.

In connection with either or both of these suggestions, TBI would be willing to give financial assistance, and assistance in lobbying or testifying before governmental agencies or legislative bodies. In order to best protect the interests of all parties to the problem, it is our recommendation that a meeting or series of meetings be scheduled among the principals, in order to discuss the problem and arrive at a solution that addresses each party's concerns. We would be willing to lend every assistance to such a plan.

If you have any questions regarding our position prior to the scheduled meeting, please feel free to contact the undersigned.

Sincerely,

Donald L. Evans

Donald L. Evans
Chairman and Chief Executive Officer

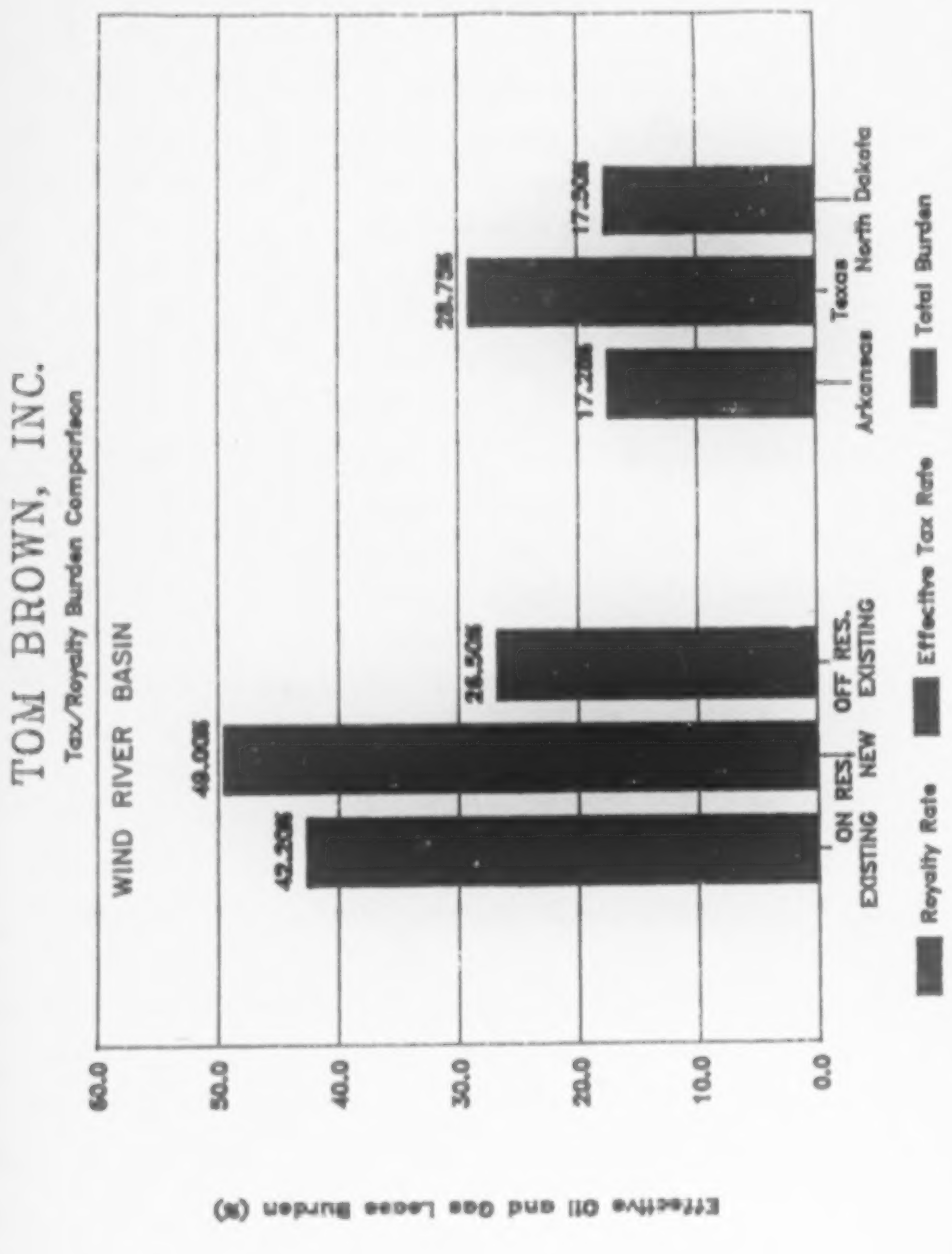
bcc DLE
[illegible]
[illegible]

Exhibit A-1
to
Letter dated March 28, 1990
from Tom Brown, Inc.
to the
Wind River Tax Commission

Effective Oil and Gas Lease Burdens

Area	Royalty Rate	Effective Tax Rate	Effective Burden
Wind River Basin Outside Reservation	12.50%	14.00%	26.50%
On Reservation	25.00%	24.00%	49.00%
Arkansas	12.50%	4.78%	17.28%
Texas	20.00%	8.75%	28.75%
North Dakota	12.50%	5.00%	17.50%

EXHIBIT A-2



TOM BROWN, INC.

Tax/Royalty Burden Comparison

STATEMENT BY THE PITTSBURG & MIDWAY COAL MINING CO. CONCERNING MULTIPLE TAXATION ON INDIAN RESERVATIONS

The Pittsburg & Midway Coal Mining Co. (P&M), a wholly owned subsidiary of Chevron Corporation, submits this statement in support of federal legislation that would relieve the burden of multiple taxation on Indian reservations.

P&M currently produces coal from its McKinley Mine which is located both on and off of the Navajo Reservation in northwestern New Mexico. Five State of New Mexico taxes and two Navajo taxes are imposed on the coal and on P&M's property on the reservation. The tribe's right to impose taxes on minerals produced by a non-Indian operating on a reservation was upheld by the United States Supreme Court in Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982), and such court recently upheld a state's right to tax non-Indians on a reservation in Cotton Petroleum v. New Mexico Department of Revenue, 485 U.S. 1005 (1988). Although the scope of Cotton Petroleum may be subject to discussion, for operators like P&M there now appears to have been a judicial determination that both states and Indian tribes may legally impose taxes on non-Indians who extract minerals on a reservation.

This multiple taxation tends to make Indian minerals and coal noncompetitive with non-Indian coal, and P&M respectfully submits that it would be appropriate for the Congress to enact legislation to address the problem. Under the current situation, multiple tax burdens discourage the development of Indian coal and minerals. This not in the best interests of the tribes, operators with a right to produce such coal and minerals, and the nation. It is not only the current Indian and state tax burdens that discourage production of Indian minerals but the uncertainty over future impositions. Potential customers of P&M's coal from the McKinley Mine are reluctant to enter into contracts which would impose an unknown future tax burden on them. Similarly, producers such as P&M cannot enter into agreements that place the risk of such tax increases on them.

The McKinley Mine has uncommitted tonnage which cannot successfully compete with coal produced by off-reservation producers. The economic needs of the Navajo Tribe and its members could be better met if coal located within the reservation could be produced and the attendant royalties and taxes paid to the Tribe. Without legislative relief such as federal tax credits, an appropriate apportionment of state and tribal taxes, or a prohibition against a state's imposing taxes on businesses conducted on Indian reservations, it is unlikely that Indian mineral resources will be fully developed.

○